MONTANA LEGISLATIVE HISTORY

Chapter 296 1993

Bill H _____ S 164 Original bill & history ✓ C

H. Committee on Work. Comp. Select			S. Committee on Labor & Employment Relations		
Hearing Date(s)	Mar 05	✓ C	Hearing Date(s)	Jan 28	✓ C
		C		Feb 04	✓ C
		C			C
		C			C
Date Out		C		Feb 08	✓ C

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

H. Labor & Employment Relations

Mar 16

Mar 18

3/10 SIGNED BY GOVERNOR
CHAPTER NUMBER 88
EFFECTIVE DATE: 03/10/93

SB 162 INTRODUCED BY GAGE

INCREASE TAX RATE ON VALUE OF RESIDENCES OVER $200,000

1/15 INTRODUCED
1/15 FISCAL NOTE REQUESTED
1/15 REFERRED TO TAXATION
1/15 FIRST READING
1/20 FISCAL NOTE RECEIVED
1/22 FISCAL NOTE PRINTED
1/26 HEARING
1/29 TABLED IN COMMITTEE

SB 163 INTRODUCED BY HARP, ET AL.

CREATE SAFETY CULTURE ACT REQUIRING EMPLOYERS TO ESTABLISH SAFETY PROGRAMS

BY REQUEST OF GOVERNOR

1/15 INTRODUCED
1/15 REFERRED TO LABOR & EMPLOYMENT RELATIONS
1/15 FISCAL NOTE REQUESTED
1/15 FIRST READING
1/25 FISCAL NOTE RECEIVED
1/26 FISCAL NOTE PRINTED
1/28 HEARING
2/12 COMMITTEE REPORT—BILL PASSED AS AMENDED
2/18 2ND READING PASSED 48 0
2/19 3RD READING PASSED 50 0

TRANSMITTED TO HOUSE
2/23 REFERRED TO WORKERS' COMP SELECT COMMITTEE
2/23 FIRST READING
3/03 HEARING
3/11 COMMITTEE REPORT—BILL CONCURRED AND RECREFERRED TO LABOR & EMPLOYMENT RELATIONS
3/16 HEARING
3/20 COMMITTEE REPORT—BILL CONCURRED
3/24 2ND READING CONCURRED 95 3
3/25 3RD READING CONCURRED 94 4

RETURNED TO SENATE
3/31 SIGNED BY PRESIDENT
4/02 SIGNED BY SPEAKER
4/05 TRANSMITTED TO GOVERNOR
4/09 SIGNED BY GOVERNOR
CHAPTER NUMBER 295
EFFECTIVE DATE: 07/01/93—SECTIONS 5, 8, 16
EFFECTIVE DATE: 01/01/94—SECTIONS 1-4, 6, 7, & 9-15

SB 164 INTRODUCED BY HARP, ET AL.

CREATE A WORKERS' COMPENSATION FRAUD INVESTIGATION AND PROSECUTION OFFICE IN THE DEPARTMENT OF JUSTICE

BY REQUEST OF GOVERNOR

1/15 INTRODUCED
1/15 REFERRED TO LABOR & EMPLOYMENT RELATIONS
1/15 FISCAL NOTE REQUESTED
1/15 FIRST READING
1/25 FISCAL NOTE RECEIVED

1/27	FISCAL NOTE PRINTED		
1/28	HEARING		
2/08	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/09	2ND READING PASSED	50	0
2/10	3RD READING PASSED	49	0
	TRANSMITTED TO HOUSE		
2/23	REFERRED TO WORKERS' COMP SELECT COMMITTEE		
2/23	FIRST READING		
3/05	HEARING		
3/11	COMMITTEE REPORT—BILL CONCURRED AND REREFERRED TO LABOR & EMPLOYMENT RELATIONS		
3/16	HEARING		
3/20	COMMITTEE REPORT—BILL CONCURRED		
3/24	2ND READING CONCURRED	100	0
3/25	3RD READING CONCURRED	100	0
	RETURNED TO SENATE		
3/31	SIGNED BY PRESIDENT		
4/02	SIGNED BY SPEAKER		
4/05	TRANSMITTED TO GOVERNOR		
4/09	SIGNED BY GOVERNOR CHAPTER NUMBER 296 EFFECTIVE DATE: 07/01/93		

SB 165 INTRODUCED BY HERTEL

CREATE INACTIVE STATUS RADIOLOGIC TECHNOLOGIST LICENSE AND RADIOLOGIC TECHNOLOGIST INSPECTOR

BY REQUEST OF DEPARTMENT OF COMMERCE

1/15	INTRODUCED		
1/15	REFERRED TO PUBLIC HEALTH, WELFARE & SAFETY		
1/15	FISCAL NOTE REQUESTED		
1/15	FIRST READING		
1/19	FISCAL NOTE RECEIVED		
1/20	FISCAL NOTE PRINTED		
1/20	HEARING		
2/05	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/06	2ND READING PASSED	31	16
2/08	3RD READING PASSED	45	5
	TRANSMITTED TO HOUSE		
2/09	REFERRED TO HUMAN SERVICES & AGING		
2/09	FIRST READING		
3/03	HEARING		
3/08	TABLED IN COMMITTEE		

SB 166 INTRODUCED BY TOWE, ET AL.

REVISE DEFINITIONS AND CRITERIA RELATING TO OCCUPATIONAL THERAPY

1/16	INTRODUCED		
1/16	REFERRED TO PUBLIC HEALTH, WELFARE & SAFETY		
1/16	FIRST READING		
2/01	HEARING		
2/15	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/19	2ND READING PASSED	50	0
2/20	3RD READING PASSED	50	0
	TRANSMITTED TO HOUSE		
2/23	REFERRED TO HUMAN SERVICES & AGING		
2/23	FIRST READING		
3/10	HEARING		

SENATE BILL NO. 164

INTRODUCED BY HARP, DRISCOLL, HALLIGAN, CRIPPEN, B. BROWN, MOLNAR, BECK, BURNETT, BENEDICT, MESAROS, GAGE, ORR, KENNEDY, VAN VALKENBURG, YELLOWTAIL, LYNCH, WILSON, BLAYLOCK, AKLESTAD, BRANDEWIE, BERGSAGEL, ELLIS, GRINDE, SAYLES, WANZENRIED, HIBBARD, COCCHIARELLA, MERCER, SCHYE, STRIZICH, DOWELL, WAGNER, BOHARSKI, SWYSGOOD, NATHE, FISHER, DEVLIN, SWIFT, HERTEL, HAGER, HARDING, JERGESON, TVEIT, HERRON, TOWE
BY REQUEST OF THE GOVERNOR

IN THE SENATE

JANUARY 15, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON LABOR & EMPLOYMENT RELATIONS.
	FIRST READING.
JANUARY 18, 1993	SPONSORS ADDED.
FEBRUARY 8, 1993	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 9, 1993	PRINTING REPORT.
	SECOND READING, DO PASS.
FEBRUARY 10, 1993	ENGROSSING REPORT.
	THIRD READING, PASSED. AYES, 49; NOES, 0.
	TRANSMITTED TO HOUSE.

IN THE HOUSE

FEBRUARY 23, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON WORKERS' COMP SELECT COMMITTEE.
	FIRST READING.
MARCH 11, 1993	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
	ON MOTION, REREFERRED TO COMMITTEE ON LABOR & EMPLOYMENT RELATIONS.
MARCH 20, 1993	COMMITTEE RECOMMEND BILL BE

CONCURRED IN. REPORT ADOPTED.

MARCH 24, 1993 SECOND READING, CONCURRED IN.

MARCH 25, 1993 THIRD READING, CONCURRED IN.
AYES, 100; NOES, 0.

RETURNED TO SENATE.

IN THE SENATE

MARCH 26, 1993 RECEIVED FROM HOUSE.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

LC 0893/01

INTRODUCED BY _____ BILL NO. 164

BY REQUEST OF THE GOVERNOR

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING A WORKERS' COMPENSATION FRAUD INVESTIGATION AND PROSECUTION OFFICE IN THE DEPARTMENT OF JUSTICE; CREATING A WORKERS' COMPENSATION FRAUD PREVENTION AND DETECTION UNIT IN THE STATE FUND; CLARIFYING CRIMINAL PENALTIES FOR WORKERS' COMPENSATION FRAUD; AND AMENDING SECTIONS 39-71-206, 39-71-316, 39-71-701, 39-71-702, AND 39-71-2001, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Workers' compensation fraud office.** There is a workers' compensation fraud investigation and prosecution office in the department of justice. The office shall investigate and prosecute fraud for the state compensation mutual insurance fund. The office is under the supervision and control of the attorney general and consists of:

(1) three persons qualified by education, training, experience, and high professional competence in investigative procedures who shall investigate violations of the provisions of Title 39, chapters 71 and 72, at the request of the state compensation mutual insurance fund; and

(2) one person licensed to practice law in Montana who shall prosecute violations of the provisions of Title 39, chapters 71 and 72. The attorney may also assist county attorneys in prosecuting violations of Title 39, chapters 71 and 72, without charge to the county.

(3) For purposes of this section, "fraud" has the meaning provided in 45-6-301(5).

Section 2. Section 39-71-206, MCA, is amended to read:

"39-71-206. Legal advisers of department and state fund -- investigative and prosecution services. (1) The attorney general is the legal adviser of the department and the state fund and shall represent either entity in all proceedings if requested by the department or state fund. The department and state fund may employ other attorneys or legal advisers as they consider necessary.

(2) As provided in [section 1], the attorney general shall provide investigative and prosecution services to the state fund with respect to violations of Title 39, chapters 71 and 72."

NEW SECTION. **Section 3. Fraud detection and prevention unit.** (1) The state fund shall establish a fraud prevention and detection unit. The unit is responsible for developing detection and investigative procedures, providing investigative services, and providing training in the prevention and investigation of fraud with respect to Title

SB 164
INTRODUCED BILL

39, chapters 71 and 72.

(2) For purposes of this section, "fraud" has the meaning provided in 45-6-301(5).

Section 4. Section 39-71-316, MCA, is amended to read:

"**39-71-316. Filing true claim -- obtaining benefits through deception or other fraudulent means.** (1) A person filing a claim under this chapter or chapter 72 of this title, by signing the claim, affirms the information filed is true and correct to the best of that person's knowledge.

(2) A person who obtains or assists in obtaining benefits to which the person is not entitled under this chapter or chapter 72 of this title may be guilty of theft under 45-6-301. A county attorney may initiate criminal proceedings against the person. This subsection includes but is not limited to a person who is receiving temporary total disability benefits, permanent total disability benefits, or rehabilitation benefits while working without the knowledge and concurrence of the insurer."

Section 5. Section 39-71-701, MCA, is amended to read:

"**39-71-701. Compensation for temporary total disability -- exception.** (1) Subject to the limitation in 39-71-736 and subsection (4) of this section, a worker is eligible for temporary total disability benefits when the worker suffers a total loss of wages as a result of an injury and until the worker reaches maximum healing.

(2) The determination of temporary total disability must be supported by a preponderance of medical evidence.

(3) Weekly compensation benefits for injury producing temporary total disability shall be 66 2/3% of the wages received at the time of the injury. The maximum weekly compensation benefits may not exceed the state's average weekly wage at the time of injury. Temporary total disability benefits must be paid for the duration of the worker's temporary disability. The weekly benefit amount may not be adjusted for cost of living as provided in 39-71-702(5).

(4) If the treating physician releases a worker to return to the same, a modified, or an alternative position that the individual is able and qualified to perform with the same employer at an equivalent or higher wage than ~~he~~ the individual received at the time of injury, the worker is no longer eligible for temporary total disability benefits even though ~~he~~ the worker has not reached maximum healing. A worker requalifies for temporary total disability benefits if the modified or alternative position is no longer available for any reason to the worker and the worker continues to be temporarily totally disabled, as defined in 39-71-116.

(5) In cases where it is determined that periodic disability benefits granted by the Social Security Act are

payable because of the injury, the weekly benefits payable under this section are reduced, but not below zero, by an amount equal, as nearly as practical, to one-half the federal periodic benefits for ~~such~~ the week, which amount is to be calculated from the date of the disability social security entitlement.

(6) Notwithstanding subsection (3), beginning July 1, 1987, through June 30, 1991, weekly compensation benefits for temporary total disability may not exceed the state's average weekly wage of $299 established July 1, 1986.

(7) A worker may not receive both wages and temporary total disability benefits without the consent of the insurer. Failure of the worker to notify the insurer of the receipt of wages while receiving temporary total disability benefits may subject the worker to criminal penalties provided in 45-6-301(6)."

Section 6. Section 39-71-702, MCA, is amended to read:

"**39-71-702. Compensation for permanent total disability.** (1) If a worker is no longer temporarily totally disabled and is permanently totally disabled, as defined in 39-71-116, the worker is eligible for permanent total disability benefits. Permanent total disability benefits must be paid for the duration of the worker's permanent total disability, subject to 39-71-710.

(2) The determination of permanent total disability

must be supported by a preponderance of medical evidence.

(3) Weekly compensation benefits for an injury resulting in permanent total disability shall be 66 2/3% of the wages received at the time of the injury. The maximum weekly compensation benefits ~~shall~~ may not exceed the state's average weekly wage at the time of injury.

(4) In cases where it is determined that periodic disability benefits granted by the Social Security Act are payable because of the injury, the weekly benefits payable under this section are reduced, but not below zero, by an amount equal, as nearly as practical, to one-half the federal periodic benefits for ~~such~~ the week, which amount is to be calculated from the date of the disability social security entitlement.

(5) A worker's benefit amount must be adjusted for a cost-of-living increase on the next July 1 after 104 weeks of permanent total disability benefits have been paid and on each succeeding July 1. A worker may not receive more than 10 ~~such~~ adjustments. The adjustment must be the percentage increase, if any, in the state's average weekly wage as adopted by the department over the state's average weekly wage adopted for the previous year or 3%, whichever is less.

~~(6) Notwithstanding subsection (3), beginning July 1, 1987, through June 30, 1991, the maximum weekly compensation benefits for permanent total disability may not exceed the~~

~~state's average weekly wage of $299 established July 1, 1986.~~ A worker may not receive both wages and permanent total disability benefits without the consent of the insurer. Failure of the worker to notify the insurer of the receipt of wages while receiving permanent total disability benefits may subject the worker to criminal penalties provided in 45-6-301(6)."

Section 7. Section 39-71-2001, MCA, is amended to read:

"**39-71-2001. Rehabilitation benefits.** (1) An injured worker is eligible for rehabilitation benefits if:

(a) the injury results in permanent partial disability or permanent total disability as defined in 39-71-116;

(b) a physician certifies that the injured worker is physically unable to work at the job the worker held at the time of the injury;

(c) a rehabilitation plan completed by a rehabilitation provider and designated by the insurer certifies that the injured worker has reasonable vocational goals and a reemployment and wage potential with rehabilitation. The plan must take into consideration the worker's age, education, training, work history, residual physical capacities, and vocational interests.

(d) a rehabilitation plan between the injured worker and the insurer is filed with the department. If the plan calls for the expenditure of funds under 39-71-1004, the

department shall authorize the department of social and rehabilitation services to use the funds.

(2) After filing the rehabilitation plan with the department, the injured worker is entitled to receive rehabilitation benefits at the injured worker's temporary total disability rate. The benefits must be paid for the period specified in the rehabilitation plan, not to exceed 104 weeks. Rehabilitation benefits must be paid during a reasonable period, not to exceed 10 weeks, while the worker is waiting to begin the agreed-upon rehabilitation plan. Rehabilitation benefits must be paid while the worker is satisfactorily completing the agreed-upon rehabilitation plan.

(3) If the rehabilitation plan provides for job placement, a vocational rehabilitation provider shall assist the worker in obtaining other employment and the worker is entitled to weekly benefits for a period not to exceed 8 weeks at the worker's temporary total disability rate. If, after receiving benefits under this subsection, the worker decides to proceed with a rehabilitation plan, the weeks in which benefits were paid under this subsection may not be credited against the maximum of 104 weeks of rehabilitation benefits provided in this section.

(4) If there is a dispute as to whether an injured worker can return to the job the worker held at the time of

injury, the insurer shall designate a rehabilitation provider to evaluate and determine whether the worker can return to the job held at the time of injury. If it is determined that ~~he~~ the worker cannot return to work, the worker is entitled to rehabilitation benefits and services as provided in subsection (2).

(5) A worker may not receive temporary total or biweekly permanent partial disability benefits and rehabilitation benefits during the same period of time.

(6) The rehabilitation provider, as authorized by the insurer, shall continue to work with and assist the injured worker until the rehabilitation plan is completed.

(7) A worker may not receive both wages and rehabilitation benefits without the consent of the insurer. Failure of the worker to notify the insurer of the receipt of wages while receiving rehabilitation benefits may subject the worker to criminal penalties provided in 45-6-301(6)."

NEW SECTION. **Section 8.** Codification instruction. (1) [Section 1] is intended to be codified as an integral part of Title 2, chapter 15, part 20, and the provisions of Title 2, chapter 15, part 20, apply to [section 1].

(2) [Section 3] is intended to be codified as an integral part of Title 39, chapter 71, and the provisions of Title 39, chapter 71, apply to [section 3].

-End-

STATE OF MONTANA - FISCAL NOTE
Form BD-15
In compliance with a written request, there is hereby submitted a Fiscal Note for SB0164, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:
An act creating a workers' compensation fraud investigation and prosecution office in the Department of Justice; creating a workers' compensation fraud prevention and detection unit in the State Fund; clarifying criminal penalties for workers' compensation fraud.

ASSUMPTIONS:

State Fund:
1. The State Fund would add 4.50 FTE to create a fraud detection and prevention unit: 1.00 FTE coordinator; 2.00 FTE field investigators; 1.00 FTE auditor; 0.50 FTE secretary.
2. The State Fund would be billed by the Department of Justice for additional costs incurred pursuant to this bill.
3. The executive budget current level includes amounts for an existing contract with the Department of Justice for approximately $40,000 per year. In addition, the executive budget recommends an increase to this contract of $65,000 in FY94 and $90,000 in FY95. The fiscal impact shown below is in lieu of the increase recommended in the executive budget. If the executive budget modifications were approved, the fiscal impact shown below would be offset.

Department of Justice:
1. The Department of Justice would add 5.00 FTE to create a workers' compensation fraud investigation and prosecution office under the supervision of the Attorney General: 1.00 FTE attorney (gr. 19); 3.00 FTE investigators (gr. 16); and 1.00 FTE clerical support (gr. 9).
2. The executive budget current level includes 1.00 FTE level of effort associated with an existing contract with the State Fund for approximately $40,000 per year. In addition, the executive budget recommends an increase to this contract of 1.00 FTE in FY94 and 2.00 FTE in FY95. The fiscal impact shown below is in lieu of the increase recommended in the executive budget. If the executive budget modifications were approved, the fiscal impact shown below would be offset.
2. Additional office space would be required.
3. The Department of Justice would bill the State Fund for the costs of operating the workers' compensation fraud investigation and prosecution office, similar to existing funding for the current contract.

FISCAL IMPACT: (continued)

Dave Lewis 1-26-93
DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

1/27/93
JOHN HARP, PRIMARY SPONSOR DATE

FISCAL IMPACT:

Expenditures:

State Fund:	FY '94			FY '95		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
FTE	224.50	229.00	4.50	227.50	232.00	4.50
Personal Services	6,498,681	6,651,407	152,726	6,584,924	6,737,650	152,726
Operating Expenses	3,550,187	3,936,097	385,910	3,832,172	4,125,872	293,700
Equipment	310,066	373,281	63,215	236,597	236,597	0
Benefits	166,027,953	166,027,953	0	182,948,465	182,948,465	0
Transfers	2,839,300	2,839,300	0	2,716,695	2,716,695	0
Debt Service	134,256	134,256	0	221,580	221,580	0
Total (Proprietary)	$179,360,443	$179,996,294	$601,851	$196,540,433	$196,986,859	$446,426

Department of Justice:	FY '94			FY '95		
Law Enforcement Srvcs (PG 18)	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
FTE	43.50	48.50	5.00	43.50	48.50	4.50
Personal Services	1,493,857	1,717,757	223,900	1,503,813	1,727,713	223,900
Operating	515,960	563,960	48,000	523,781	571,781	48,000
Equipment	125,770	203,270	77,500	92,520	92,520	0
Total	2,135,587	2,484,987	349,400	2,120,114	2,392,014	271,900
Funding:						
General Fund	1,322,529	1,322,529	0	1,328,485	1,328,485	0
State Special Revenue	413,363	762,763	349,400	407,792	679,692	271,900
Federal Fund	399,695	399,695	0	383,837	383,837	0
Total	2,135,587	2,484,987	349,400	2,120,114	2,392,014	271,900

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

SB0164 would increase the probability of detection and prosecution of individuals fraudulently receiving workers compensatio benefits from the State Fund. An increased probability of detection and prosecution is likely to have a deterrent effect on individuals fraudulently seeking to receive benefits. Reductions in benefits paid by the State Fund are inestimable but potentially significant.

Sen. Keating asked Sen. Harp when he thought the premiums will be lowered. Sen. Harp answered they will be lowered when the State gets a proactive stance on safety and the $800,000 will be an excellent investment.

Sen. Blaylock asked Sen. Harp if the $800,000 is a solid figure. Sen. Harp replied he could not predict if the figure would change.

Sen. Towe asked Sen. Harp how this plan is similar or different to the Oregon plan. Sen. Harp replied the Oregon plan has an OSHA plan with more mandates and less incentives while SB 163 is a plan of education that works with people to show the benefits of safety.

Sen. Towe asked Sen. Harp if Section 10, which addresses variable pricing, is from the Oregon plan. Sen. Harp stated it was in the law already and he is not aware of its origins.

Sen. Towe asked Sen. Harp if he agrees with the concerns of the owners of temporary agencies. Sen. Harp replied it is common for people to want to be excluded from new programs but he will leave the decision up to the Committee.

Closing by Sponsor: Sen. Harp stated he closed.

HEARING ON SB 164

Opening Statement by Sponsor:
Sen. Harp introduced SB 164 by stating this bill is at the request of Governor Racicot. This bill will look at the prevention, detection, investigation and fraud of workers comp cases. Sen. Harp stated 8% of all premium dollars paid by insurers have been determined to contribute to fraud. This bill only applies to the State Fund and it will be completely funded by the State Fund. A new fraud unit would be started by the State Fund. The Department of Justice will have a special prosecutor who will follow up on referrals of fraud by the State fund. Currently the Department of Justice has one investigator and he/she cannot keep up on the number of cases. Sen. Harp stated he is convinced if there are one or two high visibility cases of fraud enforcement it will be a deterrent to all. He also stated most fraud is not employee fraud but a third party, the medical industry or employers, not paying into the Fund. Sen. Harp cannot estimate what the savings will be.

Proponents' Testimony:
Bill Connor, Coalition for Work Comp System Improvement, stated he has extensive experience in the workers compensation. He was an investigator and a supervisor in the workers compensation area. He stated he has seen cases of fraud. Mr. Connor stated the costs of the fraudulent claims add up and put a pressure on the system. The fraud exists on the part of medical providers,

specifically chiropractors, and also employers who set themselves up as companies in order to file claims and receive benefits. Mr. Connor stated there are many fraud cases other than employees out there. He reported the state fund currently has eight people doing the investigations for them but they are not trained investigators and they do not know how to investigate a fraudulent claim. Also, there is a reluctance on the part of county attorneys to prosecute. Mr. Connor urged that a message needs to be sent and there will be a reduction of abuse if this happens.

Beth Baker, Department of Justice, expressed the support of the Attorney General and presented amendments the Department developed for the purpose of clarifying the intent of the legislation. The principle purpose of the amendment is to clarify the relationship between the fraud unit of the State Fund and the Department of Justice. The amendment makes clear the State Fund will conduct the initial detection function and refer suspected cases of fraudulent conduct to the Department of Justice which will be responsible for the criminal investigation and prosecution. Both Sections one and three of the amendment removes the bill's definition of fraud. Ms. Baker feels it creates confusing language and the section appears to be limited to the fraudulent abuse of benefits and not fraudulent actions on the workers. The amendment also makes it clear the fraudulent activity is a criminal offence. In the amendment the number of investigative positions is changed from three to four in the Department of Justice. There is not a clear effective date and Ms. Baker suggests it be July 1st, 1993.

Rick Hill, Governor's Office, stated this bill is necessary for fraud detection and prosecution and it will save money in the long run.

Pat Sweeney, State Fund, stated the State Fund strongly supports SB 164 and the amendments offered by the Attorney General's office. The State Fund has recognized fraud has not gotten the in-depth attention necessary to combat the problems. The staff of the State Fund are not able to devote the necessary amount of time to fraud detection. Mr. Sweeny submitted written testimony(Exhibit #8).

Riley Johnson, National Federation of Independent Business, believes the passage of SB 164 will send an important message to Montanans.

Jan VanRiper, attorney, stated her support for SB 164. She stated she has 50 workers compensation cases and of those there are at least three cases in which she knows her claimants have been wrongly accused. Ms. VanRiper knows the State has utilized private investigators and has had more resources going into fraud investigation currently than has been reported. The State Fund field staff is used for fraud detection. Ms. VanRiper suggested the Committee amend SB 164 so the State Fund separates the

records and accounts of all money paid to fraud investigation from the other State Fund business. Ms. Baker feels this will be important when analyzing its affects.

Russell Hill, Montana Trial Lawyers, submitted written testimony(Exhibit #9).

Paul Svrcek, representing himself, stated he strongly endorses SB 164. He suggested investigators should be placed directly under the State Fund, not the Department of Justice.

David Hemion, Helena Chamber of Commerce, stated his support of SB 164 and the importance of the State Fund to increase its ability to find and prosecute fraud.

Don Judge, Montana AFL-CIO, submitted written testimony(Exhibit #10).

Bonnie Wallen, Kalispell Chamber of Commerce, stated her organization would like to see amendments to the bill that address employer fraud. The occurrence of employer fraud is alarming. Ms. Wallen stated businesses playing with the law cannot afford to compete with businesses violating the law.

James Tutwiler, Montana Chamber of Commerce, stated his support of SB 164.

Larna Frank, Montana Farm Bureau, stated they are in full support of SB 164.

Mona Jamison, Montana Chapter of the American Physical Therapy Association, strongly supports SB 164.

Opponents' Testimony:
None

Questions From Committee Members and Responses:
Sen. Aklestad stated to Sen. Harp his concern regarding the amount of funds SB 164 requires. He asked if SB 164 will prevent new businesses from coming into Montana and if there are other bills coming before the Committee that will address this situation. Sen. Harp stated the change in classification rate is done by a committee but he knows of no legislation to address Sen. Aklestad's concern.

Sen. Aklestad asked Sen. Harp if there will be a pool of doctors around Montana that will do nothing but deal with workers comp claims to take it away from the family doctor relationship. Sen. Harp replied there will be a bill introduced next week that addresses the medical costs involved in workers compensation.

Sen. Aklestad asked Sen. Harp about the legal fees in workers compensation. Sen. Harp replied he does have an attorney bill he will introduce.

Sen. Aklestad questioned Sen. Harp why SB 164 does not address employee responsibility in complying with the safety suggestions. Sen. Harp replied legislation cannot exist to regulate all policy decisions.

Sen. Aklestad asked Beth Baker, Department of Justice, how many positions are funded right now for investigation. Ms. Baker responded there is currently one full-time investigative position. Sen. Aklestad asked how many cases have been solved. Ms. Baker responded the investigator has 23 open cases and has investigated a total of 52 cases since 1989. She cannot state how many have been solved.

Sen. Blaylock asked Pat Sweeney, State Fund, if the State Fund has used private investigators. Mr. Sweeney responded the State Fund has used private investigators.

Sen. Towe asked Sen. Harp about the provisions in SB 164 to make it a crime to collect wages as well as benefits. Sen. Towe questioned when the State should encourage people to return to work even though they are still in rehabilitation. Sen. Harp stated there was a recent case the State lost because the law is not clear on this issue. Beth Baker stated the insurer generally knows an employee's situation and works with them.

Sen. Towe asked Sen. Harp about the fiscal note of SB 164. He stated there does not seem to be any recovery note listed. Sen. Harp replied it is difficult to predict the savings. Sen. Towe asked if the legislation will be paid out of the State Fund. Sen. Harp stated the entire amount will be paid from the State Fund.

Sen. Aklestad asked Sen. Harp about page 3, lines 14-18, the amendment. Sen. Aklestad why it is necessary. Sen. Harp replied it has to be very clear an employee cannot receive benefits and work at the same time. Sen. Aklestad asked about page 6, line 5, the change from "shall" to "may." Sen. Towe stated the change is clerical.

Closing by Sponsor:
Sen. Harp closed.

ROLL CALL

SENATE COMMITTEE LABOR DATE 1/28/93

NAME	PRESENT	ABSENT	EXCUSED
Senator Aklestad	X		
Senator Keating	X		
Senator Blaylock	X		
Senator Lynch	X		
Senator Burnett		X	
Senator Wilson	X		
Senator Towe	X		

FC8

Attach to each day's minutes

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. #8
DATE 1/28/93
BILL NO. SB 164

Pat Sweeney
STATE FUND

TESTIMONY ON S.B. 164

The State Fund strongly supports Senate Bill 164. We applaud Gov. Racicot's recognition of fraud as an area of workers' compensation that needs to be addressed. We also recognize the support of many others on this bill.

Nationally fraud costs insurers 8% of all premium dollars. Based on premiums collected in fiscal year 1992 by the State Fund on approximately $127 million, there could have been approximately $10 million attributable to fraud.

The State Fund has recognized fraud as an area that was not getting the in-depth approach necessary to realistically combat the problem. The staff at that State Fund, due to multiple duties, are unable to devote full time efforts at fraud detection and prevention. We also have only one full time investigator at the Department of Justice.

Last March we sent two State Fund employees along with an investigator from the Department of Justice to Oregon to review their much publicized fraud program. That visit provided us valuable information.

Oregon's State Fund believed they were loosing $1 million a week to fraud. They publicized a zero tolerance for fraud, they used a hot line, surveillance, and focused investigation on new claims. They found the program to be cost effective but believed the major value to be deterrence.

This bill provides for a unit at the State Fund whose function will be to detect and prevent fraud. This will be done through training of State Fund staff in claims, audit and underwriting. The unit will also provide preliminary review of alleged fraudulent activity as it is reported to us or detected. Education of the public will also be a role. Staffing is to consist of a coordinator of the unit, two field representatives, an auditor, and one half-time clerical support.

Once alleged fraud is detected, it will be referred on to the Criminal Investigation Bureau at the Department of Justice. They plan to field base the agents and they will investigate workers' compensation cases full time. A prosecutor for workers' compensation fraud in the Attorney General's' Office will greatly facilitate prosecution of cases and also provide legal assistance to agents, the State Fund, and county attorneys.

We also want to make it clear that fraud by claimants will not be this program's only focus. Employer premium fraud and fraud by medical providers will also be pursued.

Conclusion

Costs in workers' compensation must be addressed and this bill is key to that effort. We would like to send the message that fraud will not be tolerated because we want workers' compensation benefits to go to workers with legitimate injuries, lower premium rates for our employers, and our economy to not be depressed because of workers compensation problems.

We urge do pass on this bill.

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. #9
DATE 1/28/93
BILL NO. SB 164

Montana Trial Lawyers ASSOCIATION

Directors:
Wade Dahood
Director Emeritus
Monte D. Beck
Thomas J. Beers
Michael D. Cok
Michael W. Cotter
Karl J. Englund
Robert S. Fain, Jr.
Victor R. Halverson, Jr.
Gene R. Jarussi
Peter M. Meloy
John M. Morrison
Gregory S. Munro
David R. Paoli
Paul M. Warren
Michael E. Wheat

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Officers:
Thomas J. Beers
President
Monte D. Beck
President-Elect
Gregory S. Munro
Vice President
Michael E. Wheat
Secretary-Treasurer
William A. Rossbach
Governor
Paul M. Warren
Governor

January 28, 1993

Sen. Tom Towe, Chair
Senate Labor and Employment Relations Committee
Room 413/415, State Capitol
Helena, MT 59624

RE: SB 164

Mr. Chair, Members of the Committee:

Thank you for this opportunity to express MTLA's qualified support for SB 164, which targets workers compensation fraud.

MTLA supports efforts to investigate, prosecute and prevent genuine fraud in Montana's workers compensation system. MTLA believes that fraud does occur on a limited scale and involves employers, insurers, providers, consultants, and attorneys as well as employees. However, MTLA also believes that Montana's workers compensation system is immense, complex, confused and unstable. Consequently, MTLA believes that investigators and prosecutors should observe the spirit as well as the letter of Sec. 45-6-301, MCA, in strictly construing the elements of criminal intent required to prove fraud.

MTLA also believes that expenditures for the fraud investigation and prosecution office in the Department of Justice and the fraud prevention and detection unit in the State Fund should be regularly recorded and reported separately, in conjunction with the results of those investigations, prosecutions, and prevention.

Since Montana's workers compensation benefits are inadequate to meet the expenses of many injured workers and their families, and since SB 163 imposes such severe consequences on injured workers who attempt to supplement those benefits, MTLA believes that the term "wages" in Section 5(7), Section 6(6), and Section 7(7) of the bill should be defined more simply and plainly than the convoluted definition of "wages" currently incorporated in Secs. 39-71-123, 39-71-118, and 39-71-117, MCA.

Finally, MTLA believes that the amendments on page 9, line 4 of SB 164 constitute a dramatic and unwarranted change in the rehabilitation benefits negotiated in 1991. Whereas current law conditions rehabilitation benefits on the injured worker's inability to return to the time-of-injury employment, SB 163 would condition those benefits on his inability to "return to work," period. If this amendment reflects careless drafting, it can be easily corrected.

Thank you for considering these comments. If I can provide additional information or assistance, please notify me.

Respectfully,

Russell B. Hill
Executive Director

Montana State AFL-CIO

Donald R. Judg
Executive Secretar

110 West 13th Street, P.O. Box 1176, Helena, Montana 59624

406-442-170

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. #10
DATE 1/28/93
BILL NO. SB 164

TESTIMONY OF DON JUDGE ON SENATE BILL 164, CREATING A WORKERS' COMPENSATION FRAUD INVESTIGATION AND PROSECUTION OFFICE, BEFORE THE SENATE LABOR AND EMPLOYMENT RELATIONS COMMITTEE, JANUARY 28, 1993

Mr. Chairman, members of the committee, for the record, I'm Don Judge and I'm here today to represent the Montana State AFL-CIO in support of amending, and then passing, Senate Bill 164.

Thank God we're finally going to do something about all the fraud that's been taking place in the workers' comp system. It's outrageous, and something needs to be done about it. Having said that, let me share with you some information discovered in other states regarding this problem.

In Colorado, the *Business Journal* recently reported that **EMPLOYER** fraud was twice as likely to occur as **EMPLOYEE** fraud.

In California, a random check of construction contractors found that 70% of these employers failed to pay their appropriate premiums, costing the state workers' compensation fund in excess of **$2 BILLION** in fiscal year 1990-91!

In Washington, D.C., a 1989 study showed that there were only 153,000 construction workers officially employed during a peak construction period, but there were another 120,000 operating as so-called "independent contractors".

In Connecticut, Congressional testimony offered that one contractor had 164 trades people working for him, but his payroll records reflected only 11 employees. The other 153 were listed as "independent contractors".

In Nevada, a state where the fund deficit is estimated at approximately $1.6 BILLION dollars, the owners of a construction firm operating under two different names were ordered to pay a judgment of over $800,000 for misreporting payroll to the State Industrial Insurance System.

Cockshaw's Construction Labor News & Opinion, a highly regarded industry publication, reported about workers' comp that: "There are many reasons for the crisis. But the largest single problem is employers who cheat the system by one means or another."

Even Congress is getting into the act. They are currently considering legislation which will allow unions, employers, associations and even workers, themselves, the authority to pursue legal redress against employers violating federal prevailing wage laws, an area where fraudulent payments of workers' comp and unemployment compensation taxes causes good employers and workers to lose billions of dollars.

Testimony of Don Judge
SB 164
January 28, 1993

Don't get me wrong, we don't condone fraud or abuse of the system by anyone, including workers. But we do believe that it's important for this committee to understand that fraud appears to be much more prevalent on the employer's side than that of the worker. That's one of the reasons we have encouraged this committee to require submission of weekly certified payrolls on our state's Little Davis Bacon Act: So that the investigators provided for in this bill -- along with unions, good employers and the workers themselves -- can monitor the appropriateness of taxes paid to our state's workers' comp system. You will recall that we have been meeting with representatives of the Montana Contractors Association about Senate Bill 62, which could, if amended, help deal with our runaway workers' comp problems.

We are concerned with a couple of issues as they are presented in SB 164 which I'd like to bring to your attention, and to offer some small amendments. The first amendment is quite simple, and I'll provide it only verbally.

Page 3, lines 14 through 18 seem to make it a crime for a worker to be receiving a combination of benefits without consent of the insurer. We object to giving the insurer the power of a judge by allowing them to approve or disapprove a worker's efforts to rehabilitate and return to the workforce. If we are out to prosecute crime, then we should find a fraudulent act of a worker, such as obtaining benefits for a non-existent injury. We don't think that SB 164 should provide an arbitrary limitation of benefits, without regards to the intent to defraud or steal from the insurer.

This same objection is raised about language contained on page 5, lines 11 through 16; page 7, lines 2 through 7; and page 9, lines 13 through 17.

The other amendment we are suggesting is attached to this testimony, and simply calls for fraudulent activities on the part of the employer or the insurer to be prosecuted under the same provisions as those being suggested for the worker.

Fraudulent activities under this amendment would include: misrepresentation and underpayment of payroll taxes; refusal to pay or unduly delaying payments of legitimate compensation benefits, or underpayments of legitimate benefits.

It would seem to us, that in the interest of fairness, and considering the evidence that employer fraud may be far more costly to the system than worker fraud, and that insurers, too, bear the responsibility to do justice to the system, everyone should be treated equally under the law.

With these amendments, we urge a do pass recommendation on SB 164. Thank you.

SB 164
(Introduced)

EXHIBIT 10
DATE 1-28-93
SB 164

1. Page 1, line 11.
Following: "39-71-702,"
Strike: "AND"

2. Page 1, line 11.
Following "39-71-2001,"
Insert: "AND 45-6-301,"

3. Page 3, line 6.
Following: "means"
Insert: "-- fraudulent reporting of payroll and premium information, and fraudulently denying benefits to worker"

4. Page 3, line 18.
After line 18
Insert: "(3) Any person who misrepresents payroll information to an insurer or misrepresents the class codes under which payroll information is provided an insurer may be guilty of theft under 45-6-301. A county attorney may initiate criminal proceedings against the person.

(4) Any person who delays, underpays, or refuses to pay benefits to which an injured worker is entitled under this chapter or chapter 72 of this title may be guilty of theft under 45-6-301. A county attorney may initiate criminal proceedings against the person."

5. Page 9, line 17.
After line 17
(This is to be added to section 45-6-301)
Insert: "(6) A person commits the offense of theft when he purposely or knowingly misrepresents payroll information to an insurer or misrepresents the class codes under which payroll information is provided an insurer for insurance coverage under title 39, chapter 71 or 72, by means of

(a) a knowingly false statement or representation; or

(b) deception.

(7) A person representing an employer or insurer, either in the capacity of an agent or employee, commits the offense of theft when he purposely or knowingly delays, underpays, or refuses to pay benefits to which an injured worker is entitled under title 39, chapter 71 or 72."

(Renumber paragraphs (6) and (7) to paragraphs (8) and (9).

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 11
DATE 1/28/93
BILL NO. SB 164

SENATE BILL 164
Proposed Amendments

Prepared by Department of Justice

Page 1, line 17:

office shall investigate and prosecute ~~fraud for~~ cases referred by the state compensation mutual insurance fund.

Page 1, line 21: (1) ~~three~~ four persons qualified by education

Page 2, lines 6-7:

~~(3) For purposes of this section, "fraud" has the meaning provided in 45-6-301(5).~~

Page 2, lines 20-25, and page 3, lines 1-3: Amend Section 3 to read as follows:

NEW SECTION. **Section 3. Fraud detection and prevention unit.** ~~(1)~~ The state fund shall establish a fraud prevention and detection unit. The unit is responsible for developing detection and ~~investigative~~ prevention procedures, providing ~~investigative~~ detection services, and providing training in the prevention and ~~investigation~~ detection of ~~fraud with respect to~~ fraudulent conduct under Title 39, chapters 71 and 72 which is subject to prosecution under Title 45. The unit shall refer all cases of suspected fraudulent conduct to the workers' compensation fraud investigation and prosecution office established in [section 1].

~~(2) For purposes of this section, "fraud" has the meaning provided in 45-6-301(5).~~

Page 3, lines 10-14:

(2) A person who obtains or assists in obtaining benefits to which the person is not entitled under this chapter or chapter 72 of this title ~~may be~~ is guilty of theft and may be prosecuted under 45-6-301. A county attorney or the attorney general may initiate criminal proceedings against the person.

Page 5, lines 11-16:

(7) A worker may not receive both wages and temporary total disability benefits without the written consent of the insurer. ~~Failure of the worker to notify the insurer of the receipt of wages while receiving temporary total disability benefits may subject the worker to criminal penalties provided in 45-6-301(6)~~ A worker who receives both wages and temporary total disability benefits without written consent of the insurer is guilty of theft and may be prosecuted under 45-6-301.

D of J

Page 7, lines 2-7:

(7) A worker may not receive both wages and permanent total disability benefits without the written consent of the insurer. ~~Failure of the worker to notify the insurer of the receipt of wages while receiving permanent total disability benefits may subject the worker to criminal penalties provided in 45-6-301(6)~~ A worker who receives both wages and permanent total disability benefits without written consent of the insurer is guilty of theft and may be prosecuted under 45-6-301.

Page 9, lines 13-17:

(7) A worker may not receive both wages and rehabilitation benefits without the written consent of the insurer. ~~Failure of the worker to notify the insurer of the receipt of wages while receiving rehabilitation benefits may subject the worker to criminal penalties provided in 45-6-301(6)~~ A worker who receives both wages and rehabilitation benefits without written consent of the insurer is guilty of theft and may be prosecuted under 45-6-301.

DATE 1/28/93 LABOR

SENATE COMMITTEE ON SB 163, SB 164

BILLS BEING HEARD TODAY: _____

PLEASE PRINT

Name	Representing	Bill No.	Check One: Support	Oppose
CHUCK HUNTER	DEPT OF LABOR & IND.	163	✓	
Don Judge	MT STATE AFL-CIO	HB 163 164	✓ Amend	
Bonnie Mallem	Kalispell Area Chamber	163 & 164	✓ Amend	
Dee Sullivan	Sullivan Construction	163 164	✓	
Ruth "	" "	"	✓	
Bill Theis	MTDA	163	✓	
Jerry Noble	Jerry Noble Inc	163		
Marilyn Hudson	Hudson Firm.	163		
Larry Watson	MT Safety Council	163	✓	
Mike Micone	MRCA	163/164	✓	
Gary Langley	MMA	163, 164	✓	
John CHERRY	SKYLINE SPORTSMEN	163/164	✓	
Robert D. Ross	MBIA, FBA, Ross Corp	163 -4	✓	
RILEY JOHNSON	NFIB	163/164	✓	
BILL CANNON	Coalition	163/164	✓	
Robert W Ross	"	163-164	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

F10

DATE 1/28/93

SENATE COMMITTEE ON LABOR

BILLS BEING HEARD TODAY: SB 163, SB 164

PLEASE PRINT

Name	Representing	Bill No.	Check One: Support	Oppose
Jim Nys	Sc I f	SB163		✓
Kathy Simpson	Self	SB163		—
Tom E Thies	MNA	SB 163		
Bill Vosser	SCMIF	160		
Terry Klein	SCMIF	163		
David Hemion	Helena Chamber	163/164		
John King	SCMIF	163	✓	
Russ Ritter	Wash Corp			
B. A. Jacobs	St. Auditor/Ins. Comm.	164		
Jim Tutwiler	MT Chamber		✓	
Charles R Brooks	MT. Ret. / Assoc	163/164	✓	
Wagner Wilcox	on-chamber		✓	
George Wood	MT Self Insurers	SB 163 SB 164	✓ with amendments	
Bob Anderson	DLI	163		
Jim Mann	Great Falls Capital	163		
Jim Burnich	Burnich Mfg	163		

VISITOR REGISTER

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F10

DATE 1/28/09

SENATE COMMITTEE ON Labor

BILLS BEING HEARD TODAY: SB 163, SB 164

Name	Representing	Bill No.	Check One: Support	Oppose
OKE NETTEBERG	SHERNO CABINETS	163-4	✓	
Russell B Hill	MTLA	163, 164	✓	
Jan Van Riper	self		✓	
Ronald D Ross	Ross Const		✓	
JERRY SOMMERS	J's RAINBOW PAINTS	164, 163	✓	
STEPHEN Dyglus	GREAT NORTHERN BUILDERS	163, 164	✓	
FRANK Shepard	Shepard's Glass	163-164	✓	
John R Topp	Belgrade Wood Prod.	163-164		
Jacqueline Lennartz	American Ins. Assoc	163, 164	✓	
David Haer	MT. BUILDING ASSOC		✓	
Tony Sadino	Sadino Const		✓	
DENNIS AZBILL	MURPHY'S CARPETECH		✓	
Mike Sanger	CUCSI	163	✓	

VISITOR REGISTER

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F10

DATE 1-28-93

SENATE COMMITTEE ON Labor

BILLS BEING HEARD TODAY: SB 163, SB 164

Name	Representing	Bill No.	Check One Support	Oppose
Bonnie Norrish	Norrish Bros. Const	163-164	X	
Joe Norrish	" " "	163-164	X	
John Norrish	" " "	163-64	X	
Michael J. Reed	AFL-CIO	163-64	X	
Lorna Frank	Mt. Farm Bureau	164	X	
John Connor	MT County Attys Assn	164	X	
Paul Svircek	self	163-64	X	
Tom Brud	Self		X	
Linda Dry	✓			
Bob Lee	✓	163-64	X	
Alan Olson	-	163-64	X	
Roger McGlenn	DIA-???	Amends 163	X	
Dick Young	Gov's Off	Both	X	
Ann M Taylor	Justice			

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE January 28, 1993

SENATE COMMITTEE ON Labor

BILLS BEING HEARD TODAY: SB 163, SB 164

Name	Representing	Bill No.	Check One: Support	Check One: Oppose
Doug Kelley	Express Services	163		X Needs Amend
BRADLEY B TALCOTT	JAMES TALCOTT CONST	163	✓	
Steve Turkiewicz	Montana Auto Dealers Assn	163	✓	
Sonny Greer	Greer Const	163		X
Monica Jamison	Mont-Chpt. American Physical Therapy	163, 164	✓	
Don Allen	CWCSI / MT. Council of Alcohol & Drug Abuse	163, 164	✓	
KEITH OLSON	MT. Logging Assn	163, 164	✓	
Michael J. Reed	AFL-CIO	164	✓	
DAN WALKER	US WEST	163	✓	with Amend
Skip Fincher	SELF	163	✓	With Amendments
Wm Egan	IBEW	163	✓	Amend
DAN WALKER	US WEST	164	✓	
Russ Logan	Bigs Chamber	163	✓	
Russ Logan	Bigs Chamber	164	✓	
Mike Stuckey	Mt. Business Assn	163-164		
Beth Baker	Dept of Justice	164	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

F10

having the state assume a large parenting role. Sen. Keating asked Father Lowney how the parents are involved so they are not relieved from their obligation under this legislation. Father Lowney replied the present legislation places the burden on the parent to remove the child from workplace but SB 223 forces the state to deal with the employer without the burden being on the parent.

Sen. Aklestad asked Mr. Hunter where SB 223 goes beyond the Federal law. Mr. Hunter replied it does not go beyond, it complies.

Sen. Aklestad asked Sen. Bartlett about section 6, line 24, item 5 and is it the intention to prohibit children from moving boxes in a freight elevator. Sen. Bartlett responded by saying there are many elevators which are dangerous to operate. Sen. Aklestad asked Sen. Bartlett if this part of SB 223 specifically addresses freight elevators. Sen. Bartlett responded in the affirmative.

Sen. Towe asked Mr. Hunter which Federal law will SB 223 conform to. Mr. Hunter responded SB 223 complies with the Federal Fair Labor Standards Act.

Sen. Towe stated his concerns about the agriculture exemptions in SB 223. Mr. Hunter stated children will not be prohibited from working on the farm but from operating dangerous machinery and there are two tiers of prohibited activities.

Sen. Towe stated most of the power driven equipment is prohibited but a power driven tractor is not on the list. Father Lowney responded it was intentional to leave the tractor off the list.

Sen. Towe asked Mr. Hunter if cleaning a hotel room is a prohibited activity. Mr. Hunter replied that is not on the list of prohibited activities. Mr. Hunter clarified that the list of prohibitions in section 7 refers to activities prohibited during school hours.

Sen. Aklestad asked if the law is different when the child is employed by his/her parent. Mr. Hunter replied that if a child is working for his/her parents, the exemption of working for parents overrides everything with the exception of working at hazardous occupations.

Closing by Sponsor:
Sen. Bartlett closed by stating her appreciation to Father Lowney and the Department of Labor and Industry and many others who worked hard to make SB 223 come to fruition and closed her comments.

EXECUTIVE ACTION ON SB 164

Discussion: Sen. Harp introduced amendments on behalf of the

Department of Justice and referred to Beth Baker, Department of Justice to explain the amendments. Ms. Baker conveyed to the Committee that the intent of the amendments to section 3, is to clarify the relationship between the fraud unit of the State Fund and the Department of Justice. The State Fund unit is going to be dealing with prevention and detection, and the Justice unit is going to be dealing with investigation and prosecution. The State Fund unit will refer cases of suspected fraud to the Justice unit, which will take cases from the State Fund and follow them up.

Ms. Baker went on to explain why the amendment is removing the definition of fraud. The definition of fraud in the original SB 164 refers to the theft statute which does not define fraud, but theft. It limits the definition of fraud to wrongfully obtaining benefits, and the Department of Justice would like all types of fraudulent conduct covered.

Ms. Baker addressed the amendments, which clarify the intent of SB 164, that workers not receive benefits and wages at the same time. The way the bill is drafted it is not clear what cases would constitute an offense. Sen. Lynch asked for an example of when a worker would get both wages and permanent total benefits. Nancy Butler, General Counsel for the State Fund, replied normally this would not happen but the amendments clarify it is theft unless the State Fund has given consent.

Sen. Harp stated there is no effective date for SB 164 and he would like it to be July 1.

Motion/Vote: Sen. Lynch moved to AMEND SB 164(Exhibit #8). The motion to AMEND SB 164 CARRIED UNANIMOUSLY.

Discussion: Sen. Harp addressed the amendments offered by Rep. Cocchiarella. He said the record keeping the amendments called for is already being done. Sen. Lynch responded he will feel better if it is known exactly what money is going into fraud prevention.

Motion/Vote: Sen. Lynch moved to AMEND SB 164(Exhibit #9). The motion to AMEND SB 164 CARRIED UNANIMOUSLY.

Motion/Vote: Sen. Keating moved 164 DO PASS AS AMENDED. The motion to DO PASS 164 CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SB 163

Discussion: Sen. Harp addressed the amendments which refer to temporary workers(Exhibit #10, SBO16303, part 7). Sen. Harp agreed temporary workers should follow the safety rules of their temporary employer, not the agency that places them.

Motion/Vote: Sen. Lynch moved to AMEND SB 163(Exhibit #9,

ROLL CALL

SENATE COMMITTEE LABOR DATE 2/4/93

NAME	PRESENT	ABSENT	EXCUSED
Senator Aklestad	X		
Senator Keating	X		
Senator Blaylock		X	
Senator Lynch	X		
Senator Burnett	X		
Senator Wilson	X		
Senator Towe	X		

FC8

Attach to each day's minutes

SENATE STANDING COMMITTEE REPORT

February 8, 1993

MR. PRESIDENT:
We, your committee on Labor and Employment Relations having had under consideration Senate Bill No. 164 (first reading copy -- white), respectfully report that Senate Bill No. 164 be amended as follows and as so amended do pass.

Signed: Thomas E. Towe
Senator Thomas E. "Tom" Towe, Chair

That such amendments read:

1. Title, line 10.
Following: "FRAUD;"
Strike: "AND"

2. Title, line 11.
Following: "MCA"
Insert: "; AND PROVIDING AN EFFECTIVE DATE"

3. Page 1, line 17.
Following: "prosecute"
Strike: "fraud for"
Insert: "cases referred by"

4. Page 1, line 21.
Following: "(1)"
Strike: "three"
Insert: "four"

5. Page 2, lines 6 and 7.
Strike: subsection (3) in its entirety

6. Page 2, line 21.
Following: "unit"
Insert: "-- expenditure accounting"

7. Page 2, line 23.
Following: "and"
Strike: "investigative"
Insert: "prevention"

8. Page 2, line 24.
Following: line 23
Strike: "investigative"
Insert: "detection

9. Page 2, line 25.
Following: "and"
Strike: "investigation"
Insert: "detection"
Following: "of"
Strike: "fraud with respect to"
Insert: "fraudulent conduct under"

10. Page 3, line 1.
Following: "72"
Insert: ", that is subject to prosecution under Title 45"
Following: "."
Insert: "The unit shall refer all cases of suspected fraudulent conduct to the workers' compensation fraud investigation and prosecution office established in [section 1]."

11. Page 3, lines 2 and 3.
Strike: subsection (2) in its entirety

12. Page 3, line 4.
Following: line 3
Insert: "(2) The state fund shall expend money to investigate fraud pursuant to this section and shall separately account for money expended."

13. Page 3, line 12.
Following: "title"
Strike: "may be"
Insert: "is"

14. Page 3, line 13.
Following: line 12
Insert: "and may be prosecuted"
Following: "attorney"
Insert: "or the attorney general"

15. Page 5, line 12.
Following: the first "the"
Insert: "written"

16. Page 5, lines 13 through 16.
Following: "insurer." on line 13
Strike: remainder of line 13 through "45-6-301(6)." on line 16
Insert: "A worker who receives both wages and temporary total disability benefits without written consent of the insurer is guilty of theft and may be prosecuted under 45-6-301."

17. Page 7, line 3.
Following: the first "the"
Insert: "written"

18. Page 7, lines 4 through 7.
Following: "insurer." on line 4
Strike: remainder of line 4 through "45-6-301(6)." on line 7
Insert: "A worker who receives both wages and permanent total disability benefits without written consent of the insurer is guilty of theft and may be prosecuted under 45-6-301."

19. Page 9, line 4.
Following: "to"
Strike: "work"
Insert: "the job held at the time of injury"

20. Page 9, line 14.
Following: the first "the"
Insert: "written"

21. Page 9, lines 15 through 17.
Strike: line 15 through "45-6-301(6)." on line 17
Insert: "A worker who receives both wages and rehabilitation benefits without written consent of the insurer is guilty of theft and may be prosecuted under 45-6-301."

22. Page 9.
Following: line 24
Insert: " NEW SECTION. Section 9. Effective date.
[This act] is effective July 1, 1993."

-END-

Amendments to S.B. 164

1. Page 9
Following: line 24
Insert: "NEW SECTION. **Section 9.** Effective date. [This act] is effective July 1, 1993.

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 9
DATE 2/4/93
BILL NO. SB 164

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
53rd LEGISLATURE - REGULAR SESSION

SELECT COMMITTEE ON WORKERS' COMPENSATION

Call to Order: By **CHAIRMAN CHASE HIBBARD**, on March 5, 1993, at 3:10 p.m.

ROLL CALL

Members Present:
Rep. Chase Hibbard, Chairman (R)
Rep. Jerry Driscoll, Vice Chairman (D)
Rep. Steve Benedict (R)
Rep. Ernest Bergsagel (R)
Rep. Vicki Cocchiarella (D)
Rep. David Ewer (D)

Members Excused: REP. BERGSAGEL

Members Absent: None

Staff Present: Susan Fox, Legislative Council
Evy Hendrickson, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing: SB 164, SB 258
Executive Action: SB 164, HB 604, HB 361 and HB 13

CHAIRMAN HIBBARD asked **Linda White** from **Lewistown** to briefly address the committee. She said several months ago a group of employers and employees formed a grassroots group to look at the workers' comp problems. They put hours of work into a survey that went to people in Central Montana. **Ms. White** said they believed that fraud was one of the biggest issues why workers' comp is in trouble. **EXHIBIT 1**

HEARING ON SB 164

Opening Statement by Sponsor:

SEN. JOHN HARP, Senate District 4, Kalispell, said the bill was introduced at the request of the Governor. Insurance fraud is a hidden crime and national statistics show that approximately 8% of all premium dollars paid by insurers are attributable to fraud. He said the State Fund itself would be involved along with the Department of Justice. The Department of Justice would

have a special prosecutor solely set aside for fraudulent claims in workers' comp and they would also have additional people who would be doing field investigations. He then reviewed the bill section by section.

SEN. HARP said the State Fund currently has a total of 14 cases under investigation in Montana including one case in Lewis & Clark County, two in Flathead County, five in Yellowstone County, and one in Gallatin County. He said one of the problems is that county attorneys have the obligation to handle the fraudulent claims but they don't have the time or the expertise because workers' comp is a specialized area. By letting the Department of Justice have special prosecutors designated to take care of the claims with their sole purpose being one of conviction, that would perhaps enhance the process.

SEN. HARP closed by saying SB 164 addresses fraud in the system.

Proponents' Testimony:

Don Allen, representing the **Coalition for Workers' Compensation System Improvement,** said as a result of the articles in the Great Falls Tribune he received 15 calls relating instances of fraud. He said he had logged all the calls and had a file of stories that involve reports of workers who are contributing to the fraud issue. He said the Coalition strongly endorsed this bill.

Beth Baker, representing the **Department of Justice,** said she was appearing before the committee to express the Attorney General's support for the bill and to explain the relationship between the fraud units of the State Fund and of the Department of Justice that would be created. She referred to sections 1 & 3 of the bill and said the amendments to the bill clearly would put people on notice as to what constitutes criminal conduct under the law.

Ms. Baker pointed out that the bill included four investigative positions in the Department of Justice. Currently, there is only one investigative position dedicated to work comp cases. The bill would add three investigators, one prosecutor and a clerical support position. It was anticipated that the new investigators would be placed within the existing criminal investigation bureau and field locations where the activity was most prevalent. The prosecutor would be housed in Helena under the supervision of the existing county prosecutor services bureau. This team would be able to bring a level of awareness to people involved in fraudulent activity.

Ms. Baker said with respect to the amendments that were going to be offered by the trial lawyers' association, the Attorney General's office did not think they were necessary and may just add problems to the bill.

Pat Sweeney, representing the **State Fund,** said they strongly

support SB 164. **EXHIBIT 2**

Darrell Holzer, representing the **Montana State AFL-CIO**, presented written testimony. **Mr. Holzer** provided amendments for page 4, lines 6 through 10. **EXHIBIT 3**

Mr. Holzer said with the amendments they strongly supported a do pass recommendation on SB 164.

Russell B. Hill, representing the **Montana Trial Lawyers' Association**, presented written testimony with recommended amendments. **EXHIBIT 4**

Rick Hill, Office of the Governor, said if the skyrocketing cost of workers' comp is going to be stopped and if confidence is going to be restored to the system, fraud abuse has to end. The Governor had asked that this bill be introduced and asked the committee to support this bill.

James Tutwiler, Montana Chamber of Commerce, gave their strong support to SB 164.

Riley Johnson, representing the **National Federation of Independent Business (NFIB)**, said that 95% of the small businesses in Montana perceive that fraud is the most common problem with workers' compensation. This bill would send a message that they are sincerely trying to do something about the problem. **Mr. Johnson** said they supported the bill and asked that the bill be passed without amendments.

Mike Micone, Montana Motor Carriers Association (MMCA), stated their support of this bill.

Charles Brooks, Montana Retailers Association, the **Montana Tire Dealers Association**, and the **Montana Implement Dealers' Association**, said they supported SB 164 and concurred with **Mr. Johnson's** testimony.

Jacqueline Lenmark, American Insurance Association (AIA), said they strongly supported passage of the bill with the amendments presented. **Ms. Lenmark** reviewed them section by section. **EXHIBIT 5**

Harlee Thompson, representing the **Montana Building Industry Association** to the **Coalition of Work Compensation System Improvement**, said SB 164 would deal very effectively with fraud in the system and urged a do pass.

Oliver Goe, Montana Municipal Insurance Authority, Montana Association of Counties, and the **Montana School Groups Insurance Authority**, supported the bill without the amendments.

Opponents' Testimony: None

Questions From Committee Members and Responses:

In response to a question from **REP. DRISCOLL, Linda White** said it was her understanding that page 6, line 8 is designed to address a situation where the worker returns to work without notifying the insurer and continues to receive benefits. The prosecutor would have to sustain a burden of proof beyond a reasonable doubt that the worker had committed theft. **Ms. White** said this language was in the bill because of prior cases that had been prosecuted.

REP. DRISCOLL said it was not the worker's job to notify the insurer; it was the doctor's responsibility.

CHAIRMAN HIBBARD asked someone from the State Fund to respond to that question. **Mr. Sweeney** said he could understand the dilemma but there was a misconception - it was not totally the obligation of the physician to notify the insurer but also the responsibility of the injured worker to notify the insurer. **Mr. Sweeney** said if this legislation was to pass, it would be the intent of the State Fund to notify each claimant with their first compensation check that in the event they are released to return to work by their physician, it is also their obligation to notify the insurer.

REP. BENEDICT asked **Mr. Sweeney**, from the State Fund's perspective, whether the bill was acceptable or needed amending. **Mr. Sweeney** replied the bill was fine as written. It had been amended in the Senate, and he recommended the bill be passed as is without amendments.

REP. BENEDICT asked **Rick Hill** the same question. **Mr. Hill** said the Governor's office would like to see the bill as it is and the House concur with Senate amendments.

REP. DRISCOLL asked **Russell Hill and Mr. Holzer** if they would like to see the bill amended. Both of the gentlemen responded affirmatively.

Closing by Sponsor:

SEN. HARP said the bill was funded solely by the State Fund and this bill, along with the additional reinforcement from the State Fund and the Department of Justice, asked for $1.6 million from employers in Montana who were committed to improving the workers' comp system by putting dollars in. This would be a benefit to employees because any time there are additional dollars being used on fraudulent claims the money is being taken away from injured workers who truly deserve it.

this was acceptable to members of the Judiciary Committee; it just didn't get done.

REP. DRISCOLL asked what the difference between the meaning of "even though" and "unless" was. **Mr. Hubbard** said he didn't think there was a lot of substance to changing the words around and thought it was an attempt to make it clear that subrogation was not entirely out the window although some may argue that it is in light of the court decision. It clarifies that the burden is on the injured worker to prove that damages exceeded both the workers' compensation benefits and the recovery in the third party action.

REP. DRISCOLL repeated the question once again. **Mr. Hubbard** said the intent of the change was to conform with the court decision where it said that the insured is not entitled to subrogation under Article 2, section 16 where the injured worker was not made whole. If you leave in "even though," he believed that would be in direct violation of the court's holding. **Mr. Hubbard** said he believes the language "unless" is more innocuous.

REP. BENEDICT asked **Mr. Hubbard** if he asked for this amendment and the Senate refused. **Mr. Hubbard** said they did ask for the amendment and the Senate did not put it in. He said the chairman of the Senate Judiciary Committee was going to check with the code commissioner to address the concerns of the State Fund; it was his understanding through discussions with some of the senators that it was more or less an inadvertent failure to amend the statute. **Mr. Hubbard** encouraged that the code commissioner be contacted.

REP. BENEDICT asked **Mr. Hubbard** if the Senate committee voted to adopt this amendment. **Mr. Hubbard** said they did not.

CHAIRMAN HIBBARD said he had sent for **Greg Petesch,** the Code Commissioner, to clear this up but he was not available. Executive action on the bill was postponed until Monday. **Ms. Fox** was to check with the code commissioner.

Closing by Sponsor:

SEN. HARP declined.

EXECUTIVE ACTION ON SB 164

Motion: **REP. BENEDICT MOVED SB 164 BE CONCURRED IN.**

Motion: **REP. DRISCOLL** moved adoption of the amendment that was handed out by **Darrell Holzer,** page 3, line 22 **EXHIBIT 3.** He said this was going to make this equal for everybody.

REP. BENEDICT referred to page 3, line 10 & 11 and said it would

be redundant.

REP. DRISCOLL asked if they computed their payroll wrong, whether the lines would cover that. **Nancy Butler,** representing the **State Fund,** said they would have to go back to the criminal statute used in Title 45 which says an employer must knowingly and intentionally misrepresent payroll so they would have to find that there was a crime on the other side. **Ms. Butler** said when you talk about conduct under chapters 71 and 72, the Work Comp Act, it would pick up anything to do with workers, employers, and medical providers but then they would have to go to the criminal code to make sure that they met the criminal statute as well.

Motion/Vote: **REP. DRISCOLL** withdrew his amendment. **REP. BENEDICT** called the question. Voice vote was taken. Motion **CARRIED.**

EXECUTIVE ACTION ON HB 604

Motion: **REP. BENEDICT** said for purposes of discussion he would **MOVE HB 604 DO PASS** but told the committee that he intended to move to table the bill following a suitable discussion in the committee.

CHAIRMAN HIBBARD said the committee had discussed the bill thoroughly and felt most of the bill was too radical for where we are at this point in workers' compensation in the state. The committee did feel that a portion of the bill may be useful elsewhere.

REP. BENEDICT said he didn't think the state was ready for the far-reaching consequences of parts of the bill. He said the payroll part has some very definite advantages and possibilities and he intended to use some of that in the payroll tax bill.

Motion/Vote: **REP. BENEDICT** made a **SUBSTITUTE MOTION HB 604 BE TABLED.** Motion carried unanimously. **EXHIBIT 8**

EXECUTIVE ACTION ON HB 361 AMENDMENTS

Motion: **CHAIRMAN HIBBARD** moved adoption of the amendments dated February 19, 1993. **EXHIBIT 9**

Discussion: **CHAIRMAN HIBBARD** reviewed the amendments section by section. He said the amendments were a result of a number of meetings between **REP. DRISCOLL,** himself, and State Fund personnel. **CHAIRMAN HIBBARD** said this was a very important bill for the package.

Vote: **REP. COCCHIARELLA** called the question. Voice vote was taken. Motion carried.

HOUSE OF REPRESENTATIVES
53RD LEGISLATURE - 1993
SELECT COMMITTEE ON WORKERS COMPENSATION

ROLL CALL DATE 2-5-93

NAME	PRESENT	ABSENT	EXCUSED
CHASE HIBBARD, CHAIRMAN	✓		
JERRY DRISCOLL, VICE CHAIRMAN	✓		
STEVE BENEDICT	✓		
ERNEST BERGSAGEL			✓
VICKI COCCHIARELLA	✓		
DAVID EWER	✓		

HR:1993
wp.rollcall.man

HOUSE SELECT COMMITTEE REPORT

March 9, 1993
Page 1 of 1

Mr. Speaker: We, the select committee on Workers' Compensation recommend that Senate Bill 164 (~~first~~ third reading copy -- ~~white~~ blue) BRF do be concurred in, and that the House refer the bill to the House Committee on Labor and Employment Relations for its consideration as part of the Workers' Compensation package.

Signed: Chase Hibbard
Chase Hibbard, Chair

Committee Vote:
Yes 7, No 0.

541536SC.Hbf

EXHIBIT 1
DATE 3/5/93
HB

LEWISTOWN AREA WORK COMP COMMITTEE
BOX 818
LEWISTOWN, MT 59457

March 3, 1993

Select Committee on Workers Compensation
Montana Legislature
Helena, Mt 59624

Dear Sirs

Attached to this letter are the results of a survey conducted in our area in February by the Lewistown Area Work Comp Committee. This committee, made up of both employers and employees, has been meeting weekly since the first of December.

Responses came from both employees and employers.

The survey was a clip out ad in our 2/14/93 issue of the Lewistown News Argus with a circulation of 5000. There were 71 responses for a return rate of 1.5%.

Of those answering the survey, 83% feel the system needs major overhaul. Other answers indicate a desire for the system to be privatized, 72%. This is a very strong preference of those responding.

People think fraud is major part of the problem and it needs to be dealt with aggressively. Of those responding 86% support a local review board for claims review and fraud investigation.

There is strong support for accountability in administrative costs, to limit the maximum on workers compensation claims, and a limit on legal fees and medical fees.

Higher workers compensation premiums are seen by 65% of the people responding as resulting in lost jobs, lower wages and higher consumer prices.

The italicized comments are the individuals responses to each question and deserve your consideration.

Sincerely

Linda O. White
Sandy Mentyka
Susan Kneeland

Lewistown Area Work Comp Committee

WB
Mary Mentyka
Charlie

Work Comp Survey

Total of 71 responses, not all answers total 71, nor do all percentages equal 100

1. How do you rate the work comp system?

No Answer	2 (3%)
Excellent	0 (0%)
Minor Problems	0 (0%)
Satisfactory	0 (0%)
Needs Improvement	2 (3%)
Needs Major Overhaul	59 (83%)
Other	3

Needs to be eliminated (2), Same undependable, inexperienced, un-reliable
Riddled with Fraud
Not working-defunct
Disgrace
Needs to be exposed for what it is
Very Poor
Disaster
Start over-Lawyer's playground at our expense
Failure since 1972!
Bureaucracy at its worst
Privatize (4)
Gross mismanagement

2. Size of business owned or work for:

No Answer	3 (4%)
0-5	31 (44%)
6-10	16 (23%)
11-15	9 (13%)
16-30	2 (3%)
above 30	10 (14%)

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3. Type of business

logging 4
construction 3
food service 2
agricultural 20
repair shop & parts
repair shop,farming and retail
retired
rancher
medical 3
manufacturing 9
retail 14
heaters
other 25
personal services
school
insurance (4)
service (8)
autobody
sawmill
land surveying
mining
author/critic
service repair
government
News-Argus
(unspecified-3)

4. Have you had to file a work comp claim?

No answer 2 (3%)
I quit employing people because the paper work got excessive
No 50 (70%)
never needed lawyers ever
Yes 19 (27%)
(one) small (claim)
Type of service: (of "Yes" answers)
handled timely 15 (79%)
2 (claims)-less than $100 claims in 4 years
several years ago
had to retain an attorney to resolve claim 1 (5%)
other 1 (5%)
threatened to pay hospital direct & deduct from next contribution; took 9 months to settle
no answer 2 (11%)

. How do you think the work comp fund should become solvent?

% tax on both employer/employee 13 (18%)
igher employer premiums 0 (0%)
imit maximum on work comp claims 41 (58%)
ccountability in administration costs 47 (66%)
imit legal fees 51 (72%)
limit medical fees 44 (62%)
coal trust subsidy 5 (7%)
sales tax 1 (1%)
increased borrowing 0 (0%)
other

prosecution for fraud of cheaters
privatize (3), it may help to eliminate the "good ol' boys club" between lawyers and government officials
employees must share 1-2%
make system accountable, run like a business
employees pay 20% of tax
eliminate
make all people participate, stop letting people use exemptions on work comp coverage
need new laws, put specific limits on injuries
too many attorneys getting wealthy off system
undercover fraud investigation
need to get rid of lawyers and lower rates to get new business
eliminate work comp court and go back to district courts. Sell old fund now and phase new fund into residual market over 3 years
the strangulation of all business in Montana
disband state workmans' comp completely, they love to spend your money
set deductibles for employees $ amount
we have to have the employees involved in the costs. They will then support in eliminating free loaders
eliminate fraud (2)
bid premiums private insurance companies
additional taxes is no method of solution. Hardly a solution for anything
do away with it completely, let people get their own insurance policy
rid system of unnecessary employees to cut payroll costs
oil, natural gas export tax

EXHIBIT 1
DATE 3-5-93

6. How do you personally see the increase in work comp premiums?

no answer 1 (1%)
lost jobs 52 (73%)
lower wages 37 (52%)
higher consumer prices 49 (69%)
reduced benefits 24 (34%)
other 15 (21%)

poor management
more jobs going out of state (2)
destruction of business (3)
committing suicide for State treasury
higher claims, must limit claims
chasing business out of Montana (2)
fraud & mismanagement by lawyers and government employees
decrease of population
payments to workers who may not be entitled to it
frivolous proper care investigation promptly would help
still necessary to cover fund/claim costs

7. Would you be willing to pay higher premiums in order to attract private insurers back to Montana?

yes 20 (28%)
no 49 (69%)
no answer 2 (3%)

money won't solve problem, legal atmosphere must be changed
loaded question

8. Do you support privatization of a part or all of work comp management & administration?

yes 51 (72%)

(privatize) all (6)
with a cap
if privatized, all (employers) should be (included), otherwise hard on people left in the pool

no 8 (11%)

not the plan currently under consideration

no answer 5 (7%)
?? 3 (4%)
maybe 2 (3%)

a better job would probably be the result

9. Would you as employers be willing to accept tort (legal) liability if work comp were eliminated or made optional?

yes 30 (42%)

but many will not

I would write through private insurers

but there must be changes in the law to limit claims and types of claims (2)

no 28 (39%)

not under current laws

not with the Treweilers of the world in the court system

no answer 13 (18%)

only if lawyers worked on work comp claims at 2/3 of minimum wage

would workers be willing to accept with their lawyers, liability for silly, fraudulent claims?

10. Would you support a set fee schedule of medical benefits?

yes 60 (85%)

if handled by insurance companies

but only with severe and similar restriction on lawyers

no 8 (11%)

no answer 3 (4%)

11. Would you support elimination of mandatory lump-sum settlements?

yes 55 (77%)

seems this would be decided case by case

cut all settlements to 20% of sum offered by judge

no 13 (18%)

no answer 3 (4%)

12. Do you support allowing stress as part of work comp?

no answer 2 (3%)

no 65 (92%)

a crazy, expensive, disastrous concept

there's simply no way to calculate the economic loss vs. stress, or any degree of stress for that matter

privatization

it would become the psychological equivalent of whiplash

everyone is under stress in personal and working life

I was under stress for the last ten years in business and asked for no compensation. I'm not a welfare-itic

this is nuts! A lawyer's brew! How do you define it? We all have stress. What is stress for one may be a "walk in the park" for another

too difficult to prove or disprove

Stress is no factor being utilized as authority to collect funds. This is a big joke

I am not sure how it would be proven; there's stress in all our lives

yes 4 (6%)

the funding is there, just being abused

1

3-5-93

13. How can state work comp be made more accountable?

local boards or county boards, with members that are employers and employees
take responsibility for their actions, make <u>all</u> work comp fraud a felony!
help people get or create jobs instead of just getting a claim off of books
throw it out; let employers get their own private insurance, or investigate all employees, employers, and the medical profession
take out the fraud, employee, employers, and the medical profession
eliminate the whole program
strict guidelines and policies, thorough review of claims and annual audit of system
better investigation of claims and better claims handling
may not be feasible, hence get the state out of it
put a ceiling on lawyers' charges (less than 5%)-get rid of judges that are obnoxious in settlements. Cut their awards to 1% of their regular settlements
stay under 15%
mandatory yearly audits for <u>all</u> employers to ensure proper payments and lower rates
turn it over to the private sector
making sure the claims processing is efficient, i.e. when a claim is submitted and adjuster contacts them, explains benefits, if long term injury- (adjuster) stays in contact with injured, continuing explanation and support
1)task force culling out fraud 2)mandated limits on collections, lawyers 3)no compensation for stress
limit lawyer fees to $50/hour, limit medical, limit amount of claims to reasonable amounts
place office locally in each unemployment office
set fees for doctors and lawyers, employees pay half, if employer carried insurance on employee, offer lower work comp premiums
the only way I can see it is if everyone ratted on others. Then we become like Nazi Germany
by investigating doctors and DC and all people getting benefits from work comp
by having follow-up exams and training for affected people to do a different job
get a system with set limits, more employer rights, less lawyers, no chiropractors, and an administration that is responsible and accountable
publish names and amounts paid to people collecting benefits
1)require medical treatment bills to be reviewed and approved by the recipient. 2)eliminate attorneys on a contingent basis, 3)eliminate lump sum settlements
eliminate state control; via privatization with high-risk pool, similar to auto insurance
make flat fees for every injury
lower lawyer and medical fees
by having six month or one year follow up on employee so that they don't use it as a lifetime pension!!
tough audits for fraud set settlements for a number of claims, set limit of lawyer fees at 8%
privatize with state run review for accountability or do away with it and mandate the employer to carry their own insurance company
get rid of lawyers who are getting more than injured workers, set specific rates for injuries and retain (retrain?) workers instead of retiring them
job security based upon performance. If not operating a successful business - fire
safety programs with drug testing mandatory. Prosecute fraud at all levels
cap attorney fees that can be collected; prosecute those who defraud

treat it like a business, watch waste and fraud
lower attorney fees
privatize, cap legal costs, cap medical costs, cap settlements, get "tough" on fraud
privatize the system
better management and accountability
see to it that very severe penalties are levied against lawyers and clients for fraud and misuse and puffiness
no way. Government can not be made accountable or practical, they have no experience and all lawyers and claimants bleed the system
Incorporating a checks and balance system in the office and get tougher on people filing for work comp
certify a number of private carriers to operate within Montana. Remove the state completely from the insurance business
make it less political and start running it like a business with more aggressive claims management
put it back into the private sector
by checking claims more thoroughly to determine if actually needed by claimant
privatize workers compensation
get people to manage with some guts and get rid of the politics, run it as a business. Throw out the people that don't do their jobs
have a review board of unrelated citizens
am skeptical that it can - study what other successful states are doing
investigate claims much more thoroughly, make the legal and medical professions more accountable
less examination trying to prove someone that isn't a liar
by making sure the claims are for real
run it like a business, eliminate the lawyers and medical people that are getting wealthy at our expense
remove the state from what should be privatized, the state has no proprietary interest when they have the taxpayer as their ultimate resource
independent and regular audits, ongoing reports on specific cases (without worker's name) so public can see what happens with each case
claims evaluated by separate Board of medical examiners - no chiropractors and self-determination

14. Would you support a local review board for claims review and fraud investigation?

yes 61 (86%)
no 7 (10%)
no answer 3 (4%)

how much would this cost
but not governmental board
depends how the board is constructed
increase cost of bureaucracy
not necessary if privatized

EXHIBIT 1
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15. Do you think a safety program would lower work comp claims?

yes 56 (79%)
no 11 (15%)
no answer 4 (6%)

What incentives for safety would be worthwhile?

lower rates (2)
fees affected by safety results
experience credits
training allowance
dollars saved to employers in premiums
take a look at Montana Logging Assn.
extra vacation day with pay (2)
less injuries
private carriers and self-insured see reduced losses and thus lower if not more stable rates as a result of better safety controls
better wages and benefits
lower the rates for good safety environments and records
privatizing would eliminate the need
worker following safety rules gets hurt, workmans comp pays; not following rules, worker pays
already in place

16. Should it be legal for the employee and/or employer to ask about each others work safety history?

yes 69 (97%)
no 2 (3%)

The current law should be removed and let employers and employees inquire without the burden of any law
coupled with right of an employer to certify a new employee's prior injury(s) if their injury re-occurs
could be a way to determine safety on previous jobs
insurance companies applications ask many questions before insuring. Includes inspections
backgrounds on each may weed out individuals and lawyers intent on making workmens comp their life instead of honest, productive work
allows for more comfort
an employee with a history of claims could be a detriment to other employees, the employer, and the system
this would establish the importance of the safety issue to the employer and employee
why hire someone with a back problem and then immediately be responsible to him for the rest of his life
absolutely, you can't change the spots on a leopard
and about spouse
try to stop fraud both ways

17. Have you ever called in a suspected fraud?

no answer 3 (4%)

this is the first time I knew there was a number (5) now I have three calls to make

no 60 (85%)

Fraud difficult to detect in most cases

I'm sure their answer would be "It's in the computer and it would cost us too much to take it off"

Most work comp would insist on paying the injured double. Proven fact.

I have had something almost the same

yes 8 (11%)

Was anything done?

no 6 (75%)

Not to my knowledge

yes 2 (25%)

This was fraud on part of employee and claim was denied. Claim was not totally true...puffy.

Denied on employer but paid anyway

EXHIBIT 1

DATE 3-5-93

18. Do you know someone who is involved in defrauding the work comp system?

no answer 38 (54%)
employee 20 (28%)
employer 10 (14%)
legal 5 (7%)
medical 8 (11%)

How would you stop the fraud?

Penalties for fraud must be tough. More prosecutors are needed. It must be stopped

Investigator was too limited in his access to information - he said employee was allowed reimbursement for medication (which he didn't take) when in fact he was given monthly compensation

more aggressive prosecution of fraud cases and report on it in the news media

anyone found guilty of this fraud (should) be ineligible for any workers' comp benefits in the future. The people defrauding the work comp system are those entrusted to supervise it: politicians

have an advertised alarm number with a reward

employee other than mine

tighter regulations on everyone involved in the system

never paying lump sums

I suspect a few and I would stop the fraud by investigation as to what really happened and if it was really work related

Get the state out of the business (2) and let the law and courts work as intended, once fraud is found

video tape - investigate or surveillance

certain chiropractors are horrible "milkers" of the system. Cap visits for which work comp will pay or remove entirely from system.

Write work comp by private insurance companies,. let independent adjusters settle all claims (G.A.B.) and disband the State Workmens Comp. The unions, lawyers and doctors would fight this because they would lose thousands of dollars a year in fringe benefits. You do not believe the facts either.

Many people in Lewistown area aware I'm sure, of individuals receiving unjust compensation.

strict enforcement of fraud laws

fraud investigation, disallow illness as work related claims

report it if I knew

it's (knowledge of someone defrauding) not current. These people and their lawyers are the reason the system is in trouble

better investigation to see if person is really hurt and is not working

even though this is only 8%, have an investigation unit checking all areas - employees, employers, medical, and legal. It should pay for itself out of 8%

make defrauding a felony (2) with monetary compensation and jail time.

Do not let it get started! Must be a way to know what doctors and lawyers are involved, could find from records!

investigate all claims

This person (involved in defrauding the system) claims to have back problems and can't work, but he works on cars crawling under them too, shovels snow, etc. and draws workmans' comp and has for years!!

18. How would you stop the fraud? (continued)

local claim review board (3), investigate all claims, with investigation power

as a matter of clarification, I suspect fraud (on claim above)

Change laws so everything isn't litigated, The current system will always breed fraud. Put set limits on injuries. Let employer choose the doctor.

Investigate all claims, question the claims

stop the doctors and lawyers from taking advantage of employees...set fees paid

have local work comp office

mandatory prison sentences

make fraud punishable by a set jail term

Have every complaint checked. Lawyers for claimant limited to 10% or less. Rid all judges on off-base awards. Make doctors accountable for their decisions and charges, Cut administrative funds 70% (or 10%?).

Require second opinion from a doctor chosen by workmans comp

Eliminate the entire program

by more investigation - rewards for people calling work comp for suspected fraud.

Look into all cases and see just what some of these people are pulling. A lot aren't really hurt. They're working at other jobs all the time.

Local board, accountability, check in once a week when on it, easier to report fraud to closer (with local board), and less cost to check fraud on (with local board)

EXHIBIT 1
DATE 3-5-93

Additional Comments:

Privatize (4)

we must have a government that will do its job - people that will work, not people that say that's not my job description. Run it like a business and keep government out, and no unions

If the employee doesn't pay part of premium (then) bonuses to them by employer for outstanding safety record

no one has told the doctors they aren't worth $150,000 a year (and) a hospital bed $1,500 a day. Work comp should have its own doctors - no exception. They only pay for you to go to these doctors, period

I strongly feel that fraud is the biggest problem, but I also feel that the employer should not be totally responsible for medical insurance. The cost of workers comp ion Montana is getting so high that employers are backing away from hiring, plus the high cost also encourages dishonesty.

Get the government out of the insurance business. Hold work comp administration responsible. The truck driver story in the Tribune was self-explanatory of part of the problem - the Legislature awarded a claim to a drunk that wasn't even on duty as a truck driver!!!

Workmens' comp is fraud waiting to happen. It is more of a sham than a benefit. Lawyers love this ambulance.

all of these comments have been given over and over again to legislators - still no action

the problem must be looked at in "real" world terms... government must be out!!! Government serves government, not people. Greed had to be eliminated as a possibility! Cap costs!

A major problem with comp is the abuse encouraged by medical and legal people. They encourage injured workers (in some cases) to more care and dollars than is necessary. Comp was not intended to be a retirement program or to make doctors and lawyers rich!

I believe there could be a connection between a lot of repeat comp claims and alcohol (and) drug abuse and if we could investigate this further somehow the results could be startling - meaning we need drug testing

looks like work comp benefits are as low as they can go

the rates are way too high. We are losing jobs to other states. Companies leaving Montana and the rates stop new business from starting up. The lawyers are getting rich off the comp system.

a complete investigation of current and past practices should take place with automatic fines, prison time, and compensation for fraudulent abuse, whether an employee of workers comp or a claimant. Make people accountable for their actions that have abused the system.

Make the doctors more responsible when they examine these patients and have frequent follow-ups. Listen to people who report someone frauding the system.

I am a senior citizen, retired, neither employer nor employee. Just a tax payer who is (hoping?) to see this settled

Review equipment allowed as part of retraining and recovery effort, i.e. computers. Unless approved person has a purpose for which a computer can be applied, supplying a unit as retraining is worthless. Vo-tech or approved classes are worthwhile. Equipment for home is not. The same goes for hot tubs, etc. Plenty of facilities are available to provide access by those in need.

Court rulings such as the enclosed are completely out of line. Workmans comp should be only to compensate for serious injuries while on the job.

Additional Comments: (continued)

Raising the rates on employees or employers will only make people cheat on the system, raise consumer prices, or leave Montana.

My employees all deserve a raise, but I cannot afford to give them one, because of the 34% raise in work comp

work comp should have local office the same as unemployment division. Then you have accountability both ways.

hurry with the solutions

if the State runs the program all business should be mandatory to insure with the State. Right now all the low risk companies have private insurance, leaving the State with all the high risk companies

Use good common sense in all areas of compensation. Have all awards checked many times before giving away the taxpayers money. If anything seems fishy, make no awards without being forced to. Be tight-fisted with tax payers money. Cut down on all administration cost to the bone. They are not producers.

When a lawyer can receive payments equal to the payments to the injured worker and these payments are to continue for the entire life of the injured worker, something is ROTTEN. When a lawyer specializing in work comp claims can become a millionaire in only three years, something is ROTTEN!

Check employee as well as employer to see if they are not getting paid by grain, beef, or other non-traceable items.

Investigate and see if all employers are paying workers' comp insurance or are they paying hired help with beef, grain, or etc. Not reporting any wages.

EXHIBIT 1
DATE 3/5/13

EXHIBIT 2
DATE 3/5/93
HB SB 164

Pat Sweeney
STATE FUND.

TESTIMONY ON S.B. 164

The State Fund strongly supports Senate Bill 164. We applaud Gov. Racicot's recognition of fraud as an area of workers' compensation that needs to be addressed. We also recognize the support of many others on this bill.

Nationally fraud costs insurers 8% of all premium dollars. Based on premiums collected in fiscal year 1992 by the State Fund on approximately $127 million, there could have been approximately $10 million attributable to fraud.

The State Fund has recognized fraud as an area that was not getting the in-depth approach necessary to realistically combat the problem. The staff at that State Fund, due to multiple duties, are unable to devote full time efforts at fraud detection and prevention. We also have only one full time investigator at the Department of Justice.

Last March we sent two State Fund employees along with an investigator from the Department of Justice to Oregon to review their much publicized fraud program. That visit provided us valuable information.

Oregon's State Fund believed they were loosing $1 million a week to fraud. They publicized a zero tolerance for fraud, they used a hot line, surveillance, and focused investigation on new claims. They found the program to be cost effective but believed the major value to be deterrence.

This bill provides for a unit at the State Fund whose function will be to detect and prevent fraud. This will be done through training of State Fund staff in claims, audit and underwriting. The unit will also provide preliminary review of alleged fraudulent activity as it is reported to us or detected. Education of the public will also be a role. Staffing is to consist of a coordinator of the unit, two field representatives, an auditor, and one half-time clerical support.

Once alleged fraud is detected, it will be referred on to the Criminal Investigation Bureau at the Department of Justice. They plan to field base the agents and they will investigate workers' compensation cases full time. A prosecutor for workers' compensation fraud in the Attorney General's' Office will greatly facilitate prosecution of cases and also provide legal assistance to agents, the State Fund, and county attorneys.

We also want to make it clear that fraud by claimants will not be this program's only focus. Employer premium fraud and fraud by medical providers will also be pursued.

Conclusion

Costs in workers' compensation must be addressed and this bill is key to that effort. We would like to send the message that fraud will not be tolerated because we want workers' compensation benefits to go to workers with legitimate injuries, lower premium rates for our employers, and our economy to not be depressed because of workers compensation problems.

We urge do pass on this bill.

EXHIBIT 2
DATE 3/5/93
SB 164

Montana State AFL-CIO

Donald R. Judge
Executive Secretary

110 West 13th Street, P.O. Box 1176, Helena, Montana 59624

406-442-1708

EXHIBIT 3
DATE 3/5/93
HB SB 164

TESTIMONY OF DARRELL HOLZER ON SENATE BILL 164,
HOUSE SELECT COMMITTEE ON WORKERS' COMPENSATION, MARCH 5, 1993

Mr. Chairman, members of the committee, for the record, I'm Darrell Holzer and I'm here today to represent the Montana State AFL-CIO in support of amending, and then passing, Senate Bill 164.

Thank God we're finally going to do something about all the fraud that's been taking place in the workers' comp system. It's outrageous, and something needs to be done about it. Having said that, let me share with you some information discovered in other states regarding this problem.

In Colorado, the *Business Journal* recently reported that **EMPLOYER** fraud was twice as likely to occur as **EMPLOYEE** fraud.

In California, a random check of construction contractors found that 70% of these employers failed to pay their appropriate premiums, costing the state workers' compensation fund in excess of **$2 BILLION** in fiscal year 1990-91!

In Washington, D.C., a 1989 study showed that there were only 153,000 construction workers officially employed during a peak construction period, but there were another 120,000 operating as so-called "independent contractors".

In Connecticut, Congressional testimony offered that one contractor had 164 trades people working for him, but his payroll records reflected only 11 employees. The other 153 were listed as "independent contractors".

In Nevada, a state where the fund deficit is estimated at approximately $1.6 BILLION dollars, the owners of a construction firm operating under two different names were ordered to pay a judgment of over $800,000 for misreporting payroll to the State Industrial Insurance System.

Cockshaw's Construction Labor News & Opinion, a highly regarded industry publication, reported about workers' comp that: "There are many reasons for the crisis. But the largest single problem is employers who cheat the system by one means or another."

Even Congress is getting into the act. They are currently considering legislation which will allow unions, employers, associations and even workers, themselves, the authority to pursue legal redress against employers violating federal prevailing wage laws, an area where fraudulent payments of workers' comp and unemployment compensation taxes causes good employers and workers to lose billions of dollars.

Testimony of Darrell Holzer on SB 164
March 5, 1993

Don't get me wrong, we don't condone fraud or abuse of the system by anyone, including workers. But we do believe that it's important for this committee to understand that fraud appears to be much more prevalent on the employer's side than that of the worker. That's one reason we have encouraged this Legislature to require submission of weekly certified payrolls on our state's Little Davis Bacon Act: So that the investigators provided for in this bill -- along with unions, good employers and the workers themselves -- can monitor the appropriateness of taxes paid to our state's workers' comp system.

We are concerned with a couple of issues as they are presented in SB 164 which I'd like to bring to your attention, and to offer some small amendments. The first amendment is quite simple, and I'll provide it only verbally.

Page 4, lines 6 through 10 seem to make it a crime for a worker to be receiving a combination of benefits without consent of the insurer. We object to giving the insurer the power of a judge by allowing them to approve or disapprove a worker's efforts to rehabilitate and return to the workforce. If we are out to prosecute crime, then we should find a fraudulent act of a worker, such as obtaining benefits for a non-existent injury. We don't think that SB 164 should provide an arbitrary limitation of benefits, without regards to the intent to defraud or steal from the insurer.

The other amendment we are suggesting is attached to this testimony, and simply calls for fraudulent activities on the part of the employer or the insurer to be prosecuted under the same provisions as those being suggested for the worker.

Fraudulent activities under this amendment would include: misrepresentation and underpayment of payroll taxes; refusal to pay or unduly delaying payments of legitimate compensation benefits, or underpayments of legitimate benefits.

It would seem to us, that in the interest of fairness, and considering the evidence that employer fraud may be far more costly to the system than worker fraud, and that insurers, too, bear the responsibility to do justice to the system, everyone should be treated equally under the law.

With these amendments, we urge a do pass recommendation on SB 164. Thank you.

Suggested amendment to SB 164

Page 3, line 22
Following: "means"
Insert: "-- fraudulent reporting of payroll and premium information, and fraudulently denying benefits to workers"

EXHIBIT 3
DATE 3/5/93
SB 164

EXHIBIT 7
DATE 3-5-93
HB SB 164

Montana Trial Lawyers Association

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March 5, 1993

Rep. Chase Hibbard, Chair
House Select Committee on Workers Compensation
Room 325, State Capitol
Helena, MT 59624

RE: SB 164

Mr. Chair, Members of the Committee:

Thank you for this opportunity to express MTLA's qualified support for SB 164, which targets workers compensation fraud.

MTLA supports efforts to investigate, prosecute and prevent genuine fraud in Montana's workers compensation system. MTLA believes that fraud does occur on a limited scale and involves employers, insurers, providers, consultants, and attorneys as well as employees.

However, MTLA also believes that Montana's workers compensation system is immense, complex, confused and unstable. Consequently, MTLA believes that investigators and prosecutors should observe the spirit as well as the letter of Sec. 45-6-301, MCA, in strictly construing the elements of criminal intent required to prove theft. The Senate amendments to Section 4 (page 4, line 3), Section 5 (page 6, lines 8-11), Section 6 (page 8, lines 2-5), and Section 7 (page 10, lines 17-20) ignore the requirement of criminal or fraudulent intent. A disabled worker who "receives" wages unexpectedly, for example--or who misunderstands the complex and convoluted definitions of "wages" currently incorporated in Secs. 39-71-123, 39-71-118, and 39-71-117, MCA--is guilty of theft. The only question is whether he will be prosecuted pursuant to Sec. 45-6-301, MCA. MTLA proposes the accompanying amendments 1 through 4 to conform each of those sections to the criminal intent required to prove theft under Sec. 45-6-301, MCA.

Sections 5, 6, and 7 also make disabled workers helplessly dependent upon written consent of the insurer but gives insurers unfettered discretion to withhold that consent for legitimate reasons, invalid reasons, or no reasons at all. The fundamental principles of equal protection in criminal law conflict directly with the enormous potential in SB 163 for insurers to unfairly discriminate among disabled workers in granting consent and in referring cases for prosecution. MTLA proposes the accompanying amendments 5 through 7 to guarantee that insurers provide or deny written consent uniformly.

Finally, consistent with the Senate amendments to Section 3 (page 3, lines 17-19), MTLA believes that expenditures for the fraud prevention and detection unit in the State Fund should be regularly recorded and reported separately. Additionally, however, MTLA believes that the State Fund should report those expenses in conjunction with the amounts recovered as a result of its investigations, prosecutions, and prevention. For that reason, MTLA proposes the accompanying amendment 8.

Thank you for considering these comments. If I can provide additional information or assistance, please notify me.

Respectfully,

Russell B. Hill

Russell B. Hill
Executive Director

EXHIBIT 4
DATE 3/5/93
SB 164

Amendments to Senate Bill 164
Third Reading Bill (Blue Copy)

Requested by the Montana Trial Lawyers Association
March 5, 1993

1. Page 4, line 1.
Following: "who"
Insert: "purposely or knowingly"

2. Page 6, line 8.
Following: "who"
Insert: "purposely or knowingly"

3. Page 8, line 2.
Following: "who"
Insert: "purposely or knowingly"

4. Page 10, line 17.
Following: "who"
Insert: "purposely or knowingly"

5. Page 6, line 11.
Following: "45-6-301."
Insert: "An insurer shall establish and comply with procedures for providing or denying written consent."

6. Page 8, line 5.
Following: "45-6-301."
Insert: "An insurer shall establish and comply with procedures for providing or denying written consent."

7. Page 10, line 20.
Following: "45-6-301."
Insert: "An insurer shall establish and comply with procedures for providing or denying written consent."

8. Page 3, line 19.
Following: "expended"
Insert: "and recovered"

EXHIBIT 4
3/5/93
SB 164

EXHIBIT 5
DATE 3/5/93
HB SB 164

Amendments to Senate Bill No. 164
Third Reading Copy

Prepared by Jacqueline Lenmark
American Insurance Association
February 17, 1993

1. Title, line 18.
Following: "FRAUD;"
Insert: "REQUIRING SUSPENSION, REVOCATION, OR DENIAL OF A PROFESSIONAL OR OCCUPATIONAL LICENSE FOR VIOLATION OF THE WORKERS' COMPENSATION LAW; REVISING THE DEFINITION OF UNPROFESSIONAL CONDUCT; PROHIBITING CERTAIN ACTIONS; GRANTING IMMUNITY FOR REPORTING VIOLATIONS OF THE WORKERS' COMPENSATION LAW;"

2. Title, line 19.
Following: "39-71-702,"
Strike: "AND"
Following: "39-71-2001,"
Insert: "37-1-131, 37-3-322, 37-6-310, 37-10-311, 37-12-321, AND 37-14-321,"

3. Page 4.
Following: line 10
Insert: "(3) A PERSON LICENSED UNDER THE PROVISIONS OF TITLE 37 IS SUBJECT TO SUSPENSION, REVOCATION, OR DENIAL OF THE LICENSE IF THE LICENSEE KNOWINGLY CLAIMS OR ASSISTS OR ABETS THE CLAIMING OF BENEFITS IN VIOLATION OF ANY PROVISION OF THIS CHAPTER OR OF CHAPTER 72."

4. Page 10.
Following: line 20
Insert: "Section 8. Section 37-1-131, MCA, is amended to read:

"37-1-131. Duties of boards. Each board within the department shall:

. . .

(2) sit in judgment in hearings for the suspension, revocation, or denial of a license of an actual or potential member of the particular profession or occupation within its jurisdiction. The hearings shall be conducted by legal counsel when required under 37-1-121(1).

(3) SUSPEND, REVOKE, OR DENY A LICENSE OF A PERSON WHO THE BOARD DETERMINES, AFTER A HEARING AS PROVIDED IN SUBSECTION (2) IS

GUILTY OF KNOWINGLY DEFRAUDING OR ABUSING OR AIDING OR ABETTING THE DEFRAUDING OR ABUSING OF THE WORKERS' COMPENSATION SYSTEM IN VIOLATION OF THE PROVISIONS OF TITLE 39, CHAPTERS 71 OR 72;

. . . renumber subsequent subsections in 37-1-131.

Section 9. Section 37-3-322, MCA, is amended to read:

"37-3-322. Unprofessional conduct. As used in this chapter, "unprofessional conduct" means: . . .

(15) resorting to fraud, misrepresentation, or deception in the examination or treatment of a person or in billing or reporting to a person, company, institution, or organization, INCLUDING FRAUD, MISREPRESENTATION, OR DECEPTION WITH REGARD TO A CLAIM FOR BENEFITS UNDER TITLE 39, CHAPTERS 71 OR 72; . . . ."

Section 10. Section 37-6-310, MCA, is amended to read:

"37-6-310. Unprofessional conduct. As used in this chapter "unprofessional conduct" means: . . .

(9) resorting to fraud, misrepresentation, or deception in the examination or treatment of a person or in billing or reporting to a person, company, institution, or organization, INCLUDING FRAUD, MISREPRESENTATION, OR DECEPTION WITH REGARD TO A CLAIM FOR BENEFITS UNDER TITLE 39, CHAPTERS 71 OR 72; . . . ."

Section 11. Section 37-10-311, MCA, is amended to read:

"37-10-311. Revocation -- unprofessional conduct.

(1) the board may revoke a certificate of registration for: . . .

(2) unprofessional conduct includes:

(a) ~~obtaining a fee by fraud or misrepresentation~~ RESORTING TO FRAUD, MISREPRESENTATION, OR DECEPTION IN THE EXAMINATION OR TREATMENT OF A PERSON OR IN BILLING OR REPORTING TO A PERSON, COMPANY, INSTITUTION, OR ORGANIZATION, INCLUDING FRAUD, MISREPRESENTATION, OR THE SECTION WITH REGARD TO A CLAIM FOR BENEFITS UNDER TITLE 39, CHAPTERS 71 OR 72; . . . ."

Section 12. Section 37-12-321, MCA, is amended to read:

"37-12-321. Unprofessional conduct. As used in this chapter, "unprofessional conduct" means: . . .

(8) resorting to fraud, misrepresentation, or deception in the examination or treatment of a person or in billing or reporting to

a person, company, institution, or organization, INCLUDING FRAUD, MISREPRESENTATION, OR DECEPTION WITH REGARD TO A CLAIM FOR BENEFITS UNDER TITLE 39, CHAPTERS 71 OR 72; . . . ."

Section 13. Section 37-14-321, MCA, is amended to read:

"37-14-321. Revocation or suspension of license or permit. A license or permit may be suspended for a fixed period . . .

(4) is guilty of unethical OR UNPROFESSIONAL conduct, as defined by rules promulgated by the board, ..."

NEW SECTION. Section 14. Prohibited actions. It is a violation and subject to penalty provided if:

(1) a medical care provider

(a) fails to document, under oath, the provision of the services or treatment for which compensation is claimed under this chapter or chapter 72; or

(b) refers a worker for treatment or diagnosis of an injury or illness that is compensable under this chapter or chapter 72 to a facility owned wholly or in part by the provider unless the provider informs the worker of the ownership interest and provides the name and address of alternate facilities, if any exist; or

(2) a person licensed to practice law in Montana or a medical care provider who advertises his services or facilities with the intention that a worker use those services or facilities in regard to an injury or illness that is compensable under this chapter or chapter 72 fails to announce in the advertisement that filing a fraudulent claim is a crime as provided in 39-71-316.

(3) A person who violates this section may be assessed a penalty of not less than $200.00 or more than $500.00 for each offense. The department shall assess and collect the penalty.

NOTE: This Section should probably be coordinated with other "self-referral" sections in other bills.

NEW SECTION. Section 15. No liability for reporting violation. A person, including but not limited to an insurer or an employer, may not be held liable for civil damages as a result of reporting in good faith and without malice information that the person believes proves a violation of the provisions of this chapter or of chapter 72."

5. Page 10, line 25.
Following: "3"
Insert: "14 and 15"

EXHIBIT 5
DATE 3/5/93
SB 164

SB 163

REP. HIBBARD stated that this bill will prevent injuries before they occur and will focus on safety. A business with five or more employees will be required to establish a safety committee and a Line of Duty (LOD) procedure. Furthermore, this bill will provide student safety awareness training before these students enter the work force full-time. **REP. HIBBARD** stated that the passage of this bill is very important to the package.

SB 164

REP. HIBBARD stated that this bill deals with prevention. The purpose of SB 164 is to create a fraud investigation office in the Department of Justice and a prevention of fraud office at the State Fund. This bill will allow the State Fund to send the message that fraud won't be tolerated and to give them the tools they need to enforce fraud provisions.

HB 453

REP. HIBBARD stated that this bill complements the fraud provisions in SB 164. The passage of this bill will make thieves pay ten times the amount that would be paid by an insurer on the false claim..

HB 622

REP. HIBBARD stated that this bill is a catch-all bill. The purpose of the bill is to generally revise workers' compensation and occupational disease laws. Everyone is subject to the same rules under this bill. A lawyer who does not pay will be charged with fraud.

SB 394

REP. HIBBARD stated that the passage of this bill will regulate attorney fees for workers' compensation cases.

HB 504

REP. HIBBARD stated that the passage of this bill is necessary to get out from under the problems in workers' compensation more quickly. This bill increases the payroll tax and imposes an employee wage tax to eliminate the old fund unfunded liability.

HB 13

REP. HIBBARD stated that the purpose of this bill is to generally revise workers' compensation laws and to revise the State Fund's budget and funding procedures. The passage of this bill makes sure all findings are reported to the Governor.

HB 511

Motion/Vote: **REP. DRISCOLL MOTIONED FOR SB 163 DO BE CONCURRED IN.** The question was called. A voice vote was taken. The motion **CARRIED** 15 to 1 with **REP. WHALEN** voting no.

EXECUTIVE ACTION ON HB 453

Motion: **REP. BENEDICT MOVED HB 453 DO PASS. REP. BENEDICT MOVED HIS PROPOSED AMENDMENTS (EXHIBIT #1).** The question was called on the amendments. The motion to DO PASS the amendments carried unanimously. **REP. BENEDICT MOVED HB 453 DO PASS AS AMENDED.**

Discussion:

REP. WHALEN stated that the same provision is contained in HB 622, page 31, section 12, line 11-15. He stated that he feels a need to reconcile what is being done. He motioned to strike the new language in subsection 2 and to put coordinating instruction on HB 453 so it reads like HB 622.

REP. BENEDICT resisted the motion and referred to 45-6-301, MCA.

Susan Fox, Legislative Council, stated that it doesn't provide a conflict and the code commissioner will take care of the renumbering; therefore, an amendment is not necessary.

Motion/Vote: **REP. BENEDICT MOVED HB 453 DO PASS AS AMENDED.** The question was called. A voice vote was taken. The motion **CARRIED** unanimously.

EXECUTIVE ACTION ON SB 164

Motion: **REP. BENEDICT MOVED SB 164 BE CONCURRED IN.**

Discussion: None

Motion/Vote: **REP. BENEDICT MOVED SB 164 BE CONCURRED IN.** The question was called. A voice vote was taken. The motion **CARRIED** unanimously.

EXECUTIVE ACTION ON HB 587

Motion: **REP. BENEDICT MOVED HB 587 DO PASS.**

Discussion: None

Motion/Vote: **REP. BENEDICT MOTIONED HB 587 DO PASS.** The question was called. A voice vote was taken. The motion **CARRIED** unanimously.

HOUSE STANDING COMMITTEE REPORT

March 19, 1993

Mr. Speaker: We, the committee on Labor report that Senate Bill 164 (third reading copy -- blue) be concurred in .

Signed: Tom Nelson
Tom Nelson, Chair

Carried by: Rep. Driscoll

Committee Vote:
Yes ___, No ___. 6/0/0.

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